

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1923 By: Newberry of the Senate
3 and
4 Echols of the House
5

6
7 An Act relating to Service Warranty Act; amending
8 Sections 1, 2, 18 and 24, Chapter 150, O.S.L. 2012
9 (15 O.S. Supp. 2013, Sections 141.1, 141.2, 141.18
10 and 141.24), which relate to short title,
11 definitions, annual statement, sales representative
12 and authority for civil action; modifying references;
13 adding definitions; and providing an effective date.

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AUTHORS: Remove Representative Echols as principal House author and
substitute with Representative Wood. Add Representative
Echols as coauthor

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"An Act relating to the Service Warranty Act;
amending Sections 1, 2, 18 and 24, Chapter 150,
O.S.L. 2012 (15 O.S. Supp. 2013, Sections 141.1,
141.2, 141.18 and 141.24), which relate to short
title, definitions, annual statement, sales
representative and authority for civil action;
modifying references; adding definitions; amending
36 O.S. 2011, Sections 6651 and 6652, as amended by
Sections 34 and 35, Chapter 150, O.S.L. 2012 (36
O.S. Supp. 2013, Sections 6651 and 6652), which
relate to the Vehicle Protection Product Act;
modifying citation; modifying applicability; and
providing an effective date.

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

2 SECTION 1. AMENDATORY Section 1, Chapter 150, O.S.L.
3 2012 (15 O.S. Supp. 2013, Section 141.1), is amended to read as
4 follows:

5 Section 141.1 ~~Sections 1 through 32 of this~~ This act shall be
6 known and may be cited as the "Service Warranty Act".

7 SECTION 2. AMENDATORY Section 2, Chapter 150, O.S.L.
8 2012 (15 O.S. Supp. 2013, Section 141.2), is amended to read as
9 follows:

10 Section 141.2 As used in the Service Warranty Act:

- 11 1. "Commissioner" means the Insurance Commissioner;
- 12 2. "Consumer product" means tangible personal property
13 primarily used for personal, family, or household purposes;
- 14 3. "Department" means the Insurance Department;
- 15 4. "Gross income" means the total amount of revenue received in
16 connection with business-related activity;
- 17 5. "Gross written provider fee" means the total amount of
18 consideration, inclusive of commissions, paid by a consumer for a
19 service warranty issued in this state;
- 20 6. "Impaired" means having liabilities in excess of assets;
- 21 7. "Indemnify" means to undertake repair or replacement of a
22 consumer product or a newly-constructed residential structure,
23 including any appliances, electrical, plumbing, heating, cooling or
24 air conditioning systems, in return for the payment of a segregated

1 provider fee, when the consumer product or residential structure
2 becomes defective or suffers operational failure;

3 8. "Insolvent" means any actual or threatened delinquency
4 including, but not limited to, any one or more of the following
5 circumstances:

6 a. an association's total liabilities exceed the
7 association's total assets excluding goodwill,
8 franchises, customer lists, patents or trademarks, and
9 receivables from or advances to officers, directors,
10 employees, salesmen, and affiliated companies. In
11 order to include receivables from affiliated companies
12 as assets as defined pursuant to this subparagraph and
13 paragraph ~~10~~ 12 of this section, the service warranty
14 association shall provide a written guarantee to
15 assure repayment of all receivables, loans, and
16 advances from affiliated companies. The written
17 guarantee must be made by a guaranteeing organization
18 which:

- 19 (1) has been in continuous operation for ten (10)
20 years or more and has net assets in excess of
21 Five Hundred Million Dollars (\$500,000,000.00),
22 (2) submits a guarantee on a form acceptable to the
23 Insurance Commissioner that contains a provision
24 which requires that the guarantee be irrevocable,

1 unless the guaranteeing organization can
2 demonstrate to the Commissioner's satisfaction
3 that the cancellation of the guarantee will not
4 result in the net assets of the service warranty
5 association falling below its minimum net asset
6 requirement and the Commissioner approves
7 cancellation of the guarantee,

8 (3) initially submits a statement from a certified
9 public accountant of the guaranteeing
10 organization attesting that the net assets of the
11 guaranteeing organization meet or exceed the net
12 assets requirement as provided in division (1) of
13 this subparagraph and that the net assets of the
14 guaranteeing organization exceed the amount of
15 the receivable of the service warranty
16 association that is being guaranteed by the
17 guaranteeing organization,

18 (4) submits annually to the Commissioner, within
19 three (3) months after the end of its fiscal
20 year, with the annual statement required by
21 Section ~~14~~ 141.14 of this ~~act~~ title, a statement
22 from an independent certified public accountant
23 attesting that the net assets of the guaranteeing
24 organization meet or exceed the net assets

1 requirement as provided in division (1) of this
2 subparagraph and that the net assets of the
3 guaranteeing organization exceed the amount of
4 the receivable of the service warranty
5 association that is being guaranteed by the
6 guaranteeing organization, and

7 (5) the receivables are maintained as cash or as
8 marketable securities,

9 b. the business of any such association is being
10 conducted fraudulently, or

11 c. the association has knowingly overvalued its assets;

12 9. "Insurer" means any property or casualty insurer duly
13 authorized to transact such business in this state;

14 10. "Motor vehicle ancillary service" includes any one or more
15 of the following services:

16 a. repair or replacement of tires and/or wheels on a
17 motor vehicle damaged as a result of coming into
18 contact with road hazards,

19 b. the removal of dents, dings or creases on a motor
20 vehicle that can be repaired using the process of
21 paintless dent removal without affecting the existing
22 paint finish and without replacement vehicle body
23 panels, sanding, bonding or painting,

- 1 c. the repair of chips or cracks in or the replacement of
2 motor vehicle windshields as a result of damage caused
3 by road hazards,
- 4 d. the replacement of a motor vehicle key or key-fob in
5 the event that the key or key-fob becomes inoperable
6 or is lost or stolen,
- 7 e. payment to or services provided under the terms of an
8 ancillary protection product, or
- 9 f. other services which may be approved by the
10 Commissioner, if not inconsistent with other
11 provisions of this act.

12 A motor vehicle ancillary service does not include repair and/or
13 replacement of damage to the interior surfaces of a vehicle, or for
14 repair and/or replacement of damage to the exterior paint or finish
15 of a vehicle; however, such coverage may be offered in connection
16 with the sale of a motor vehicle ancillary protection product as
17 defined in this section;

18 11. "Motor vehicle ancillary protection product" or "ancillary
19 protection product" means a protective chemical substance, device or
20 system that:

- 21 a. is installed on or applied to a motor vehicle,
22 b. is designed to prevent loss or damage to a motor
23 vehicle from a specific cause, and

1 c. includes, within or as an accompaniment to a service
2 warranty, a written agreement that provides that, if
3 the ancillary protection product fails to prevent loss
4 or damage to a motor vehicle from a specific cause,
5 the provider will pay to or on behalf of the service
6 contract holder specified incidental costs as a result
7 of the failure of the ancillary protection product to
8 perform pursuant to the terms of the ancillary
9 protection product warranty. The reimbursement of
10 incidental cost(s) promised under an ancillary
11 protection product warranty must be tied to the
12 purchase of a physical product that is formulated or
13 designed to make the specified loss or damage from a
14 specific cause less likely to occur.

15 For purposes of this section, the term ancillary protection
16 product shall include, but not be limited to, protective chemicals,
17 alarm systems, body-part-marking products, steering locks, window-
18 etch products, pedal and ignition locks, fuel and ignition kill
19 switches and electronic, radio or satellite tracking devices.

20 Ancillary protection product does not include fuel additives, oil
21 additives or other chemical products applied to the engine,
22 transmission, or fuel system of a motor vehicle;

23 12. "Net assets" means the amount by which the total assets of
24 an association, excluding goodwill, franchises, customer lists,

1 patents or trademarks, and receivables from or advances to officers,
2 directors, employees, salesmen, and affiliated companies, exceed the
3 total liabilities of the association. For purposes of the Service
4 Warranty Act, the term "total liabilities" does not include the
5 capital stock, paid-in capital, or retained earning of an
6 association unless a written guaranty assures repayment and meets
7 the conditions specified in subparagraph a of paragraph 8 of this
8 section;

9 ~~11.~~ 13. "Person" includes an individual, company, corporation,
10 association, insurer, agent and any other legal entity;

11 ~~12.~~ 14. "Provider fee" means the total consideration received
12 or to be received, including sales commissions, by whatever name
13 called, by a service warranty association for, or related to, the
14 issuance and delivery of a service warranty, including any charges
15 designated as assessments or fees for membership, policy, survey,
16 inspection, or service or other charges. However, a repair charge
17 is not a provider fee unless it exceeds the usual and customary
18 repair fee charged by the association, provided the repair is made
19 before the issuance and delivery of the warranty;

20 ~~13.~~ 15. "Road hazard" means a hazard that is encountered while
21 driving a motor vehicle and which may include, but not be limited
22 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
23 or composite scraps;
24

1 16. "Sales representative" means any person utilized by an
2 insurer or service warranty association for the purpose of selling
3 or issuing service warranties;

4 ~~14.~~ 17. "Service warranty" means a contract or agreement for a
5 separately stated consideration for a specific duration to perform
6 the repair or replacement of property or indemnification for repair
7 or replacement for the operational or structural failure due to a
8 defect or failure in materials or workmanship, with or without
9 additional provision for incidental payment of indemnity under
10 limited circumstances, including, but not limited to, failure due to
11 normal wear and tear, towing, rental and emergency road service,
12 road hazard, power surge, and accidental damage from handling or as
13 otherwise provided for in the contract or agreement; ~~however.~~ The
14 term "service warranty" includes a contract or agreement to provide
15 one or more motor vehicle ancillary service(s) as defined by this
16 section. However:

- 17 a. maintenance service contracts under the terms of which
18 there are no provisions for such indemnification are
19 expressly excluded from this definition,
- 20 b. those contracts issued solely by the manufacturer,
21 distributor, importer or seller of the product, or any
22 affiliate or subsidiary of the foregoing entities,
23 whereby such entity has contractual liability
24 insurance in place, from an insurer licensed in the

1 state, which covers one hundred percent (100%) of the
2 claims exposure on all contracts written without being
3 predicated on the failure to perform under such
4 contracts, are expressly excluded from this
5 definition,

6 c. the term "service warranty" does not include service
7 contracts entered into between consumers and nonprofit
8 organizations or cooperatives the members of which
9 consist of condominium associations and condominium
10 owners, which contracts require the performance of
11 repairs and maintenance of appliances or maintenance
12 of the residential property,

13 d. the term "service warranty" does not include
14 warranties, guarantees, extended warranties, extended
15 guarantees, contract agreements or any other service
16 contracts issued by a company which performs at least
17 seventy percent (70%) of the service work itself and
18 not through subcontractors, and which has been selling
19 and honoring such contracts in Oklahoma for at least
20 twenty (20) years,

21 e. the term "service warranty" does not include
22 warranties, guarantees, extended warranties, extended
23 guarantees, contract agreements or any other service
24 contracts, whether or not such service contracts

1 otherwise meet the definition of service warranty,
2 issued by a company which has net assets in excess of
3 One Hundred Million Dollars (\$100,000,000.00). A
4 service warranty association may use the net assets of
5 a parent company to qualify under this section if the
6 net assets of the company issuing the policy total at
7 least Twenty-five Million Dollars (\$25,000,000.00) and
8 the parent company maintains net assets of at least
9 Seventy-five Million Dollars (\$75,000,000.00) not
10 including the net assets held by the service warranty
11 associations, and

12 f. service warranties are not insurance in this state or
13 otherwise regulated under the Insurance Code;

14 ~~15.~~ 18. "Service warranty association" or "association" means
15 any person, other than an authorized insurer, contractually
16 obligated to a service contract holder under the terms of a service
17 warranty; provided, this term shall not mean any person engaged in
18 the business of erecting or otherwise constructing a new home;

19 ~~16.~~ 19. "Warrantor" means any service warranty association
20 engaged in the sale of service warranties and deriving not more than
21 fifty percent (50%) of its gross income from the sale of service
22 warranties; and

23 ~~17.~~ 20. "Warranty seller" means any service warranty
24 association engaged in the sale of service warranties and deriving

1 more than fifty percent (50%) of its gross income from the sale of
2 service warranties.

3 SECTION 3. AMENDATORY Section 18, Chapter 150, O.S.L.
4 2012 (15 O.S. Supp. 2013, Section 141.18), is amended to read as
5 follows:

6 Section 141.18 Along with the annual statement filed pursuant
7 to Section ~~17~~ 141.14 of this ~~act~~ title, each service warranty
8 association or insurer shall provide the name and business address
9 of each sales representative utilized by it in this state.

10 SECTION 4. AMENDATORY Section 24, Chapter 150, O.S.L.
11 2012 (15 O.S. Supp. 2013, Section 141.24), is amended to read as
12 follows:

13 Section 141.24 A. Any person damaged by a violation of the
14 provisions of the Service Warranty Act may bring a civil action
15 against a person violating such provisions in the district court of
16 the county in which the alleged violator resides or has its
17 principal place of business or in the county in which the alleged
18 violation occurred. Upon adverse adjudication, the defendant shall
19 be liable for actual damages or Five Hundred Dollars (\$500.00)
20 whichever is greater, together with court costs and reasonable
21 attorney's fees incurred by the plaintiff.

22 B. A service warranty and those contracts specified in
23 subparagraphs a through e of paragraph ~~14~~ 17 of Section 141.2 of
24 ~~Title 15 of the Oklahoma Statutes~~ this title shall not be deemed to

1 create a special relationship between the parties which would give
2 rise to an action in tort to recover for breach of the duty of good
3 faith and fair dealing. This section shall not be construed to
4 preclude a breach of contract action for failure of the parties to
5 comply with the implied duty of good faith and fair dealing in
6 carrying out their obligations as set forth in the service warranty.

7 C. This section shall not be construed to authorize a civil
8 action against the Insurance Department, its employees, or the
9 Insurance Commissioner.

10 SECTION 5. AMENDATORY 36 O.S. 2011, Section 6651, as
11 amended by Section 34, Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013,
12 Section 6651), is amended to read as follows:

13 Section 6651. As used in the Vehicle Protection Product Act:

14 1. "Administrator" means a third party other than the warrantor
15 who is designated by the warrantor to be responsible for the
16 administration of vehicle protection product warranties;

17 2. "Commissioner" means the Insurance Commissioner;

18 3. "Department" means the Insurance Department;

19 4. "Incidental costs" means expenses specified in the warranty
20 incurred by the warranty holder related to the failure of the
21 vehicle protection product to perform as provided in the warranty.

22 Incidental costs may include insurance policy deductibles, rental
23 vehicle charges, the difference between the actual value of the
24 stolen vehicle at the time of theft and the cost of a replacement

1 vehicle, vehicle excise taxes, vehicle registration fees,
2 certificate of title fees, transaction fees and mechanical
3 inspection fees;

4 5. "Service contract" means a contract or agreement as defined
5 under the Service Warranty Act in ~~Sections 6601 through 6639 of this~~
6 ~~title~~ Title 15 of the Oklahoma Statutes;

7 6. "Vehicle protection product" means a vehicle protection
8 device, system, or service that:

- 9 a. is installed on or applied to a vehicle,
10 b. is designed to prevent loss or damage to a vehicle
11 from a specific cause, and
12 c. includes a written warranty.

13 For purposes of this section, the term vehicle protection
14 product shall include alarm systems, body part marking products,
15 steering locks, window etch products, pedal and ignition locks, fuel
16 and ignition kill switches, and electronic, radio and satellite
17 tracking devices;

18 7. "Vehicle protection product warranty" or "warranty" means a
19 written agreement by a warrantor that provides if the vehicle
20 protection product fails to prevent loss or damage to a vehicle from
21 a specific cause, that the warrantor will pay to or on behalf of the
22 warranty holder specified incidental costs as a result of the
23 failure of the vehicle protection product to perform pursuant to the
24 terms of the warranty;

1 8. "Vehicle protection product warrantor" or "warrantor" means
2 a person who is contractually obligated to the warranty holder under
3 the terms of the vehicle protection product warranty agreement.
4 Warrantor does not include an authorized insurer providing a
5 warranty reimbursement insurance policy;

6 9. "Warranty holder" means a person who purchases a vehicle
7 protection product or who is a permitted transferee; and

8 10. "Warranty reimbursement insurance policy" means a policy of
9 insurance that is issued to the vehicle protection product warrantor
10 to provide reimbursement to the warrantor or to pay on behalf of the
11 warrantor all covered contractual obligations incurred by the
12 warrantor under the terms and conditions of the insured vehicle
13 protection product warranties issued by the warrantor.

14 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6652, as
15 amended by Section 35, Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013,
16 Section 6652), is amended to read as follows:

17 Section 6652. A. No vehicle protection product may be sold or
18 offered for sale in this state unless the seller, warrantor, and
19 administrator, if any, comply with the provisions of the Vehicle
20 Protection Product Act.

21 B. Vehicle protection product warrantors and related vehicle
22 protection product sellers and warranty administrators complying
23 with the Vehicle Protection Product Act are not required to comply
24

1 with and are not subject to any other provisions of the Insurance
2 Code.

3 C. Service contract providers who ~~do not~~ sell vehicle
4 protection products and are licensed under the Service Warranty Act
5 in Title 15 of the Oklahoma Statutes are not subject to the
6 requirements of the Vehicle Protection Product Act and sales of the
7 vehicle protection products under the Vehicle Protection Product Act
8 are exempt from the requirements of the Service Warranty Act.

9 D. Warranties, indemnity agreements, and guarantees that are
10 not provided as a part of a vehicle protection product are not
11 subject to the provisions of the Vehicle Protection Product Act.

12 SECTION 7. This act shall become effective November 1, 2014.

13 Passed the House of Representatives the 15th day of April, 2014.

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16 _____
Presiding Officer of the House of
17 Representatives

18 Passed the Senate the ____ day of _____, 2014.

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21 _____
Presiding Officer of the Senate

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1 ENGROSSED SENATE
2 BILL NO. 1923

By: Newberry of the Senate

and

Echols of the House

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6 An Act relating to Service Warranty Act; amending
7 Sections 1, 2, 18 and 24, Chapter 150, O.S.L. 2012
8 (15 O.S. Supp. 2013, Sections 141.1, 141.2, 141.18
9 and 141.24), which relate to short title,
10 definitions, annual statement, sales representative
11 and authority for civil action; modifying references;
12 adding definitions; and providing an effective date.

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

14 SECTION 8. AMENDATORY Section 1, Chapter 150, O.S.L.
15 2012 (15 O.S. Supp. 2013, Section 141.1), is amended to read as
16 follows:

17 Section 141.1. ~~Sections 1 through 32 of this~~ This act shall be
18 known and may be cited as the "Service Warranty Act".

19 SECTION 9. AMENDATORY Section 2, Chapter 150, O.S.L.
20 2012 (15 O.S. Supp. 2013, Section 141.2), is amended to read as
21 follows:

22 Section 141.2. As used in the Service Warranty Act:

- 23 1. "Commissioner" means the Insurance Commissioner;
- 24 2. "Consumer product" means tangible personal property
primarily used for personal, family, or household purposes;
3. "Department" means the Insurance Department;

1 4. "Gross income" means the total amount of revenue received in
2 connection with business-related activity;

3 5. "Gross written provider fee" means the total amount of
4 consideration, inclusive of commissions, paid by a consumer for a
5 service warranty issued in this state;

6 6. "Impaired" means having liabilities in excess of assets;

7 7. "Indemnify" means to undertake repair or replacement of a
8 consumer product or a newly-constructed residential structure,
9 including any appliances, electrical, plumbing, heating, cooling or
10 air conditioning systems, in return for the payment of a segregated
11 provider fee, when the consumer product or residential structure
12 becomes defective or suffers operational failure;

13 8. "Insolvent" means any actual or threatened delinquency
14 including, but not limited to, any one or more of the following
15 circumstances:

- 16 a. an association's total liabilities exceed the
17 association's total assets excluding goodwill,
18 franchises, customer lists, patents or trademarks, and
19 receivables from or advances to officers, directors,
20 employees, salesmen, and affiliated companies. In
21 order to include receivables from affiliated companies
22 as assets as defined pursuant to this subparagraph and
23 paragraph ~~10~~ 12 of this section, the service warranty
24 association shall provide a written guarantee to

1 assure repayment of all receivables, loans, and
2 advances from affiliated companies. The written
3 guarantee must be made by a guaranteeing organization
4 which:

- 5 (1) has been in continuous operation for ten (10)
6 years or more and has net assets in excess of
7 Five Hundred Million Dollars (\$500,000,000.00),
- 8 (2) submits a guarantee on a form acceptable to the
9 Insurance Commissioner that contains a provision
10 which requires that the guarantee be irrevocable,
11 unless the guaranteeing organization can
12 demonstrate to the Commissioner's satisfaction
13 that the cancellation of the guarantee will not
14 result in the net assets of the service warranty
15 association falling below its minimum net asset
16 requirement and the Commissioner approves
17 cancellation of the guarantee,
- 18 (3) initially submits a statement from a certified
19 public accountant of the guaranteeing
20 organization attesting that the net assets of the
21 guaranteeing organization meet or exceed the net
22 assets requirement as provided in division (1) of
23 this subparagraph and that the net assets of the
24 guaranteeing organization exceed the amount of

1 the receivable of the service warranty
2 association that is being guaranteed by the
3 guaranteeing organization,

4 (4) submits annually to the Commissioner, within
5 three (3) months after the end of its fiscal
6 year, with the annual statement required by
7 Section ~~14~~ 141.14 of this ~~act~~ title, a statement
8 from an independent certified public accountant
9 attesting that the net assets of the guaranteeing
10 organization meet or exceed the net assets
11 requirement as provided in division (1) of this
12 subparagraph and that the net assets of the
13 guaranteeing organization exceed the amount of
14 the receivable of the service warranty
15 association that is being guaranteed by the
16 guaranteeing organization, and

17 (5) the receivables are maintained as cash or as
18 marketable securities,

19 b. the business of any such association is being
20 conducted fraudulently, or

21 c. the association has knowingly overvalued its assets;

22 9. "Insurer" means any property or casualty insurer duly
23 authorized to transact such business in this state;

1 10. "Motor vehicle ancillary service" includes any one or more
2 of the following services:

3 a. repair or replacement of tires and/or wheels on a
4 motor vehicle damaged as a result of coming into
5 contact with road hazards,

6 b. the removal of dents, dings or creases on a motor
7 vehicle that can be repaired using the process of
8 paintless dent removal without affecting the existing
9 paint finish and without replacement vehicle body
10 panels, sanding, bonding or painting,

11 c. the repair of chips or cracks in or the replacement of
12 motor vehicle windshields as a result of damage caused
13 by road hazards,

14 d. the replacement of a motor vehicle key or key-fob in
15 the event that the key or key-fob becomes inoperable
16 or is lost or stolen,

17 e. payment to or services provided under the terms of an
18 ancillary protection product, or

19 f. other services which may be approved by the
20 Commissioner, if not inconsistent with other
21 provisions of this act.

22 A motor vehicle ancillary service does not include repair and/or
23 replacement of damage to the interior surfaces of a vehicle, or for
24 repair and/or replacement of damage to the exterior paint or finish

1 of a vehicle; however, such coverage may be offered in connection
2 with the sale of a motor vehicle ancillary protection product as
3 defined in this section;

4 11. "Motor vehicle ancillary protection product" or "ancillary
5 protection product" means a protective chemical substance, device or
6 system that:

7 a. is installed on or applied to a motor vehicle,

8 b. is designed to prevent loss or damage to a motor
9 vehicle from a specific cause, and

10 c. includes, within or as an accompaniment to a service
11 warranty, a written agreement that provides that, if
12 the ancillary protection product fails to prevent loss
13 or damage to a motor vehicle from a specific cause,
14 the provider will pay to or on behalf of the service
15 contract holder specified incidental costs as a result
16 of the failure of the ancillary protection product to
17 perform pursuant to the terms of the ancillary
18 protection product warranty. The reimbursement of
19 incidental cost(s) promised under an ancillary
20 protection product warranty must be tied to the
21 purchase of a physical product that is formulated or
22 designed to make the specified loss or damage from a
23 specific cause less likely to occur.

1 For purposes of this section, the term ancillary protection
2 product shall include, but not be limited to, protective chemicals,
3 alarm systems, body part-marking products, steering locks, window
4 etch products, pedal and ignition locks, fuel and ignition kill
5 switches and electronic, radio- and satellite-tracking devices.
6 Ancillary protection product does not include fuel additives, oil
7 additives or other chemical products applied to the engine,
8 transmission, or fuel system of a motor vehicle;

9 12. "Net assets" means the amount by which the total assets of
10 an association, excluding goodwill, franchises, customer lists,
11 patents or trademarks, and receivables from or advances to officers,
12 directors, employees, salesmen, and affiliated companies, exceed the
13 total liabilities of the association. For purposes of the Service
14 Warranty Act, the term "total liabilities" does not include the
15 capital stock, paid-in capital, or retained earning of an
16 association unless a written guaranty assures repayment and meets
17 the conditions specified in subparagraph a of paragraph 8 of this
18 section;

19 ~~11.~~ 13. "Person" includes an individual, company, corporation,
20 association, insurer, agent and any other legal entity;

21 ~~12.~~ 14. "Provider fee" means the total consideration received
22 or to be received, including sales commissions, by whatever name
23 called, by a service warranty association for, or related to, the
24 issuance and delivery of a service warranty, including any charges

1 designated as assessments or fees for membership, policy, survey,
2 inspection, or service or other charges. However, a repair charge
3 is not a provider fee unless it exceeds the usual and customary
4 repair fee charged by the association, provided the repair is made
5 before the issuance and delivery of the warranty;

6 ~~13.~~ 15. "Road hazard" means a hazard that is encountered while
7 driving a motor vehicle and which may include, but not be limited
8 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
9 or composite scraps;

10 16. "Sales representative" means any person utilized by an
11 insurer or service warranty association for the purpose of selling
12 or issuing service warranties;

13 ~~14.~~ 17. "Service warranty" means a contract or agreement for a
14 separately stated consideration for a specific duration to perform
15 the repair or replacement of property or indemnification for repair
16 or replacement for the operational or structural failure due to a
17 defect or failure in materials or workmanship, with or without
18 additional provision for incidental payment of indemnity under
19 limited circumstances, including, but not limited to, failure due to
20 normal wear and tear, towing, rental and emergency road service,
21 road hazard, power surge, and accidental damage from handling or as
22 otherwise provided for in the contract or agreement; ~~however.~~
23 Service warranty includes a contract or agreement to provide one or

24

1 more motor vehicle ancillary service(s) as defined by this section.

2 However:

- 3 a. maintenance service contracts under the terms of which
4 there are no provisions for such indemnification are
5 expressly excluded from this definition,
- 6 b. those contracts issued solely by the manufacturer,
7 distributor, importer or seller of the product, or any
8 affiliate or subsidiary of the foregoing entities,
9 whereby such entity has contractual liability
10 insurance in place, from an insurer licensed in the
11 state, which covers one hundred percent (100%) of the
12 claims exposure on all contracts written without being
13 predicated on the failure to perform under such
14 contracts, are expressly excluded from this
15 definition,
- 16 c. the term "service warranty" does not include service
17 contracts entered into between consumers and nonprofit
18 organizations or cooperatives the members of which
19 consist of condominium associations and condominium
20 owners, which contracts require the performance of
21 repairs and maintenance of appliances or maintenance
22 of the residential property,
- 23 d. the term "service warranty" does not include
24 warranties, guarantees, extended warranties, extended

1 guarantees, contract agreements or any other service
2 contracts issued by a company which performs at least
3 seventy percent (70%) of the service work itself and
4 not through subcontractors, and which has been selling
5 and honoring such contracts in Oklahoma for at least
6 twenty (20) years,

7 e. the term "service warranty" does not include
8 warranties, guarantees, extended warranties, extended
9 guarantees, contract agreements or any other service
10 contracts, whether or not such service contracts
11 otherwise meet the definition of service warranty,
12 issued by a company which has net assets in excess of
13 One Hundred Million Dollars (\$100,000,000.00). A
14 service warranty association may use the net assets of
15 a parent company to qualify under this section if the
16 net assets of the company issuing the policy total at
17 least Twenty-five Million Dollars (\$25,000,000.00) and
18 the parent company maintains net assets of at least
19 Seventy-five Million Dollars (\$75,000,000.00) not
20 including the net assets held by the service warranty
21 associations, and

22 f. service warranties are not insurance in this state or
23 otherwise regulated under the Insurance Code;

24

1 ~~15.~~ 18. "Service warranty association" or "association" means
2 any person, other than an authorized insurer, contractually
3 obligated to a service contract holder under the terms of a service
4 warranty; provided, this term shall not mean any person engaged in
5 the business of erecting or otherwise constructing a new home;

6 ~~16.~~ 19. "Warrantor" means any service warranty association
7 engaged in the sale of service warranties and deriving not more than
8 fifty percent (50%) of its gross income from the sale of service
9 warranties; and

10 ~~17.~~ 20. "Warranty seller" means any service warranty
11 association engaged in the sale of service warranties and deriving
12 more than fifty percent (50%) of its gross income from the sale of
13 service warranties.

14 SECTION 10. AMENDATORY Section 18, Chapter 150, O.S.L.
15 2012 (15 O.S. Supp. 2013, Section 141.18), is amended to read as
16 follows:

17 Section 141.18. Along with the annual statement filed pursuant
18 to Section ~~17~~ 141.14 of this ~~act~~ title, each service warranty
19 association or insurer shall provide the name and business address
20 of each sales representative utilized by it in this state.

21 SECTION 11. AMENDATORY Section 24, Chapter 150, O.S.L.
22 2012 (15 O.S. Supp. 2013, Section 141.24), is amended to read as
23 follows:

24

1 Section 141.24. A. Any person damaged by a violation of the
2 provisions of the Service Warranty Act may bring a civil action
3 against a person violating such provisions in the district court of
4 the county in which the alleged violator resides or has its
5 principal place of business or in the county in which the alleged
6 violation occurred. Upon adverse adjudication, the defendant shall
7 be liable for actual damages or Five Hundred Dollars (\$500.00)
8 whichever is greater, together with court costs and reasonable
9 attorney's fees incurred by the plaintiff.

10 B. A service warranty and those contracts specified in
11 subparagraphs a through e of paragraph 14 of Section 141.2 of ~~Title~~
12 ~~15 of the Oklahoma Statutes~~ this title shall not be deemed to create
13 a special relationship between the parties which would give rise to
14 an action in tort to recover for breach of the duty of good faith
15 and fair dealing. This section shall not be construed to preclude a
16 breach of contract action for failure of the parties to comply with
17 the implied duty of good faith and fair dealing in carrying out
18 their obligations as set forth in the service warranty.

19 C. This section shall not be construed to authorize a civil
20 action against the Insurance Department, its employees, or the
21 Insurance Commissioner.

22 SECTION 12. This act shall become effective November 1, 2014.
23
24

