

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1923

By: Newberry of the Senate

and

Wood and Echols of the
House

11 COMMITTEE SUBSTITUTE

12 An Act relating to the Service Warranty Act; amending
13 Sections 1, 2, 18 and 24, Chapter 150, O.S.L. 2012
14 (15 O.S. Supp. 2013, Sections 141.1, 141.2, 141.18
15 and 141.24), which relate to short title,
16 definitions, annual statement, sales representative
17 and authority for civil action; modifying references;
18 adding definitions; amending 36 O.S. 2011, Sections
19 6651 and 6652, as amended by Sections 34 and 35,
20 Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013,
21 Sections 6651 and 6652), which relate to the Vehicle
22 Protection Product Act; modifying citation; modifying
23 applicability; and providing an effective date.

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

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

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

3 SECTION 2. AMENDATORY Section 2, Chapter 150, O.S.L.
4 2012 (15 O.S. Supp. 2013, Section 141.2), is amended to read as
5 follows:

6 Section 141.2 As used in the Service Warranty Act:

7 1. "Commissioner" means the Insurance Commissioner;

8 2. "Consumer product" means tangible personal property
9 primarily used for personal, family, or household purposes;

10 3. "Department" means the Insurance Department;

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

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

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

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

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

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

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

1 that the cancellation of the guarantee will not
2 result in the net assets of the service warranty
3 association falling below its minimum net asset
4 requirement and the Commissioner approves
5 cancellation of the guarantee,

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

16 (4) submits annually to the Commissioner, within
17 three (3) months after the end of its fiscal
18 year, with the annual statement required by
19 Section ~~14~~ 141.14 of this ~~act~~ title, a statement
20 from an independent certified public accountant
21 attesting that the net assets of the guaranteeing
22 organization meet or exceed the net assets
23 requirement as provided in division (1) of this
24 subparagraph and that the net assets of the

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

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

7 b. the business of any such association is being
8 conducted fraudulently, or

9 c. the association has knowingly overvalued its assets;

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

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

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

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

22 c. the repair of chips or cracks in or the replacement of
23 motor vehicle windshields as a result of damage caused
24 by road hazards,

- 1 d. the replacement of a motor vehicle key or key-fob in
2 the event that the key or key-fob becomes inoperable
3 or is lost or stolen,
- 4 e. payment to or services provided under the terms of an
5 ancillary protection product, or
- 6 f. other services which may be approved by the
7 Commissioner, if not inconsistent with other
8 provisions of this act.

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

15 11. "Motor vehicle ancillary protection product" or "ancillary
16 protection product" means a protective chemical substance, device or
17 system that:

- 18 a. is installed on or applied to a motor vehicle,
- 19 b. is designed to prevent loss or damage to a motor
20 vehicle from a specific cause, and
- 21 c. includes, within or as an accompaniment to a service
22 warranty, a written agreement that provides that, if
23 the ancillary protection product fails to prevent loss
24 or damage to a motor vehicle from a specific cause,

1 the provider will pay to or on behalf of the service
2 contract holder specified incidental costs as a result
3 of the failure of the ancillary protection product to
4 perform pursuant to the terms of the ancillary
5 protection product warranty. The reimbursement of
6 incidental cost(s) promised under an ancillary
7 protection product warranty must be tied to the
8 purchase of a physical product that is formulated or
9 designed to make the specified loss or damage from a
10 specific cause less likely to occur.

11 For purposes of this section, the term ancillary protection
12 product shall include, but not be limited to, protective chemicals,
13 alarm systems, body-part-marking products, steering locks, window-
14 etch products, pedal and ignition locks, fuel and ignition kill
15 switches and electronic, radio or satellite tracking devices.
16 Ancillary protection product does not include fuel additives, oil
17 additives or other chemical products applied to the engine,
18 transmission, or fuel system of a motor vehicle;

19 12. "Net assets" means the amount by which the total assets of
20 an association, excluding goodwill, franchises, customer lists,
21 patents or trademarks, and receivables from or advances to officers,
22 directors, employees, salesmen, and affiliated companies, exceed the
23 total liabilities of the association. For purposes of the Service
24 Warranty Act, the term "total liabilities" does not include the

1 capital stock, paid-in capital, or retained earning of an
2 association unless a written guaranty assures repayment and meets
3 the conditions specified in subparagraph a of paragraph 8 of this
4 section;

5 ~~11.~~ 13. "Person" includes an individual, company, corporation,
6 association, insurer, agent and any other legal entity;

7 ~~12.~~ 14. "Provider fee" means the total consideration received
8 or to be received, including sales commissions, by whatever name
9 called, by a service warranty association for, or related to, the
10 issuance and delivery of a service warranty, including any charges
11 designated as assessments or fees for membership, policy, survey,
12 inspection, or service or other charges. However, a repair charge
13 is not a provider fee unless it exceeds the usual and customary
14 repair fee charged by the association, provided the repair is made
15 before the issuance and delivery of the warranty;

16 ~~13.~~ 15. "Road hazard" means a hazard that is encountered while
17 driving a motor vehicle and which may include, but not be limited
18 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
19 or composite scraps;

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

23 ~~14.~~ 17. "Service warranty" means a contract or agreement for a
24 separately stated consideration for a specific duration to perform

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

- 12 a. maintenance service contracts under the terms of which
13 there are no provisions for such indemnification are
14 expressly excluded from this definition,
- 15 b. those contracts issued solely by the manufacturer,
16 distributor, importer or seller of the product, or any
17 affiliate or subsidiary of the foregoing entities,
18 whereby such entity has contractual liability
19 insurance in place, from an insurer licensed in the
20 state, which covers one hundred percent (100%) of the
21 claims exposure on all contracts written without being
22 predicated on the failure to perform under such
23 contracts, are expressly excluded from this
24 definition,

- 1 c. the term "service warranty" does not include service
2 contracts entered into between consumers and nonprofit
3 organizations or cooperatives the members of which
4 consist of condominium associations and condominium
5 owners, which contracts require the performance of
6 repairs and maintenance of appliances or maintenance
7 of the residential property,
- 8 d. the term "service warranty" does not include
9 warranties, guarantees, extended warranties, extended
10 guarantees, contract agreements or any other service
11 contracts issued by a company which performs at least
12 seventy percent (70%) of the service work itself and
13 not through subcontractors, and which has been selling
14 and honoring such contracts in Oklahoma for at least
15 twenty (20) years,
- 16 e. the term "service warranty" does not include
17 warranties, guarantees, extended warranties, extended
18 guarantees, contract agreements or any other service
19 contracts, whether or not such service contracts
20 otherwise meet the definition of service warranty,
21 issued by a company which has net assets in excess of
22 One Hundred Million Dollars (\$100,000,000.00). A
23 service warranty association may use the net assets of
24 a parent company to qualify under this section if the

1 net assets of the company issuing the policy total at
2 least Twenty-five Million Dollars (\$25,000,000.00) and
3 the parent company maintains net assets of at least
4 Seventy-five Million Dollars (\$75,000,000.00) not
5 including the net assets held by the service warranty
6 associations, and

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

9 ~~15.~~ 18. "Service warranty association" or "association" means
10 any person, other than an authorized insurer, contractually
11 obligated to a service contract holder under the terms of a service
12 warranty; provided, this term shall not mean any person engaged in
13 the business of erecting or otherwise constructing a new home;

14 ~~16.~~ 19. "Warrantor" means any service warranty association
15 engaged in the sale of service warranties and deriving not more than
16 fifty percent (50%) of its gross income from the sale of service
17 warranties; and

18 ~~17.~~ 20. "Warranty seller" means any service warranty
19 association engaged in the sale of service warranties and deriving
20 more than fifty percent (50%) of its gross income from the sale of
21 service warranties.

22 SECTION 3. AMENDATORY Section 18, Chapter 150, O.S.L.
23 2012 (15 O.S. Supp. 2013, Section 141.18), is amended to read as
24 follows:

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

5 SECTION 4. AMENDATORY Section 24, Chapter 150, O.S.L.
6 2012 (15 O.S. Supp. 2013, Section 141.24), is amended to read as
7 follows:

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

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

3 C. This section shall not be construed to authorize a civil
4 action against the Insurance Department, its employees, or the
5 Insurance Commissioner.

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

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

- 10 1. "Administrator" means a third party other than the warrantor
11 who is designated by the warrantor to be responsible for the
12 administration of vehicle protection product warranties;
- 13 2. "Commissioner" means the Insurance Commissioner;
- 14 3. "Department" means the Insurance Department;
- 15 4. "Incidental costs" means expenses specified in the warranty
16 incurred by the warranty holder related to the failure of the
17 vehicle protection product to perform as provided in the warranty.
18 Incidental costs may include insurance policy deductibles, rental
19 vehicle charges, the difference between the actual value of the
20 stolen vehicle at the time of theft and the cost of a replacement
21 vehicle, vehicle excise taxes, vehicle registration fees,
22 certificate of title fees, transaction fees and mechanical
23 inspection fees;

24

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

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

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

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

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

22 8. "Vehicle protection product warrantor" or "warrantor" means
23 a person who is contractually obligated to the warranty holder under
24 the terms of the vehicle protection product warranty agreement.

1 Warrantor does not include an authorized insurer providing a
2 warranty reimbursement insurance policy;

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

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

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

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

18 B. Vehicle protection product warrantors and related vehicle
19 protection product sellers and warranty administrators complying
20 with the Vehicle Protection Product Act are not required to comply
21 with and are not subject to any other provisions of the Insurance
22 Code.

23 C. Service contract providers who ~~do not~~ sell vehicle
24 protection products and are licensed under the Service Warranty Act

1 in Title 15 of the Oklahoma Statutes are not subject to the
2 requirements of the Vehicle Protection Product Act and sales of the
3 vehicle protection products under the Vehicle Protection Product Act
4 are exempt from the requirements of the Service Warranty Act.

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

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

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10 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/31/2014 - DO
11 PASS, As Amended and Coauthored.

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