

1 **SENATE FLOOR VERSION**

2 February 20, 2014

3 SENATE BILL NO. 1923

By: Newberry of the Senate

4 and

5 Echols of the House

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

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

16 SECTION 1. AMENDATORY Section 1, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2013, Section 141.1), is amended to read as
18 follows:

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

21 SECTION 2. AMENDATORY Section 2, Chapter 150, O.S.L.
22 2012 (15 O.S. Supp. 2013, Section 141.2), is amended to read as
23 follows:

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

1. "Commissioner" means the Insurance Commissioner;

- 1 2. "Consumer product" means tangible personal property
2 primarily used for personal, family, or household purposes;
- 3 3. "Department" means the Insurance Department;
- 4 4. "Gross income" means the total amount of revenue received in
5 connection with business-related activity;
- 6 5. "Gross written provider fee" means the total amount of
7 consideration, inclusive of commissions, paid by a consumer for a
8 service warranty issued in this state;
- 9 6. "Impaired" means having liabilities in excess of assets;
- 10 7. "Indemnify" means to undertake repair or replacement of a
11 consumer product or a newly-constructed residential structure,
12 including any appliances, electrical, plumbing, heating, cooling or
13 air conditioning systems, in return for the payment of a segregated
14 provider fee, when the consumer product or residential structure
15 becomes defective or suffers operational failure;
- 16 8. "Insolvent" means any actual or threatened delinquency
17 including, but not limited to, any one or more of the following
18 circumstances:
- 19 a. an association's total liabilities exceed the
20 association's total assets excluding goodwill,
21 franchises, customer lists, patents or trademarks, and
22 receivables from or advances to officers, directors,
23 employees, salesmen, and affiliated companies. In
24 order to include receivables from affiliated companies

1 as assets as defined pursuant to this subparagraph and
2 paragraph ~~10~~ 12 of this section, the service warranty
3 association shall provide a written guarantee to
4 assure repayment of all receivables, loans, and
5 advances from affiliated companies. The written
6 guarantee must be made by a guaranteeing organization
7 which:

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

1 assets requirement as provided in division (1) of
2 this 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,

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

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

22 b. the business of any such association is being
23 conducted fraudulently, or

24 c. the association has knowingly overvalued its assets;

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

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

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

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

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

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

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

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

1 A motor vehicle ancillary service does not include repair and/or
2 replacement of damage to the interior surfaces of a vehicle, or for
3 repair and/or replacement of damage to the exterior paint or finish
4 of a vehicle; however, such coverage may be offered in connection
5 with the sale of a motor vehicle ancillary product as defined in
6 this section;

7 11. "Motor vehicle ancillary product" or "ancillary protection
8 product" means a protective chemical substance, device or system
9 that:

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

1 designed to make the specified loss or damage from a
2 specific cause less likely to occur.

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

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

21 ~~11.~~ 13. "Person" includes an individual, company, corporation,
22 association, insurer, agent and any other legal entity;

23 ~~12.~~ 14. "Provider fee" means the total consideration received
24 or to be received, including sales commissions, by whatever name

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

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

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

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

1 Service warranty includes a contract or agreement to provide one or
2 more motor vehicle ancillary service(s) as defined by this section.

3 However:

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

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

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

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

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

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

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

16 SECTION 3. AMENDATORY Section 18, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2013, Section 141.18), is amended to read as
18 follows:

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

1 SECTION 4. AMENDATORY Section 24, Chapter 150, O.S.L.
2 2012 (15 O.S. Supp. 2013, Section 141.24), is amended to read as
3 follows:

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

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

22 C. This section shall not be construed to authorize a civil
23 action against the Insurance Department, its employees, or the
24 Insurance Commissioner.

1 SECTION 5. This act shall become effective November 1, 2014.

2 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE
3 February 20, 2014 - DO PASS
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