

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2715 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Charles Ortega _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2715

By: Ortega

7
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to service warranties; amending
10 Sections 13 and 26, Chapter 150, O.S.L. 2012 (15 O.S.
11 Supp. 2015, Sections 141.13 and 141.26), which relate
12 to the Service Warranty Act; modifying information
13 required in service contracts; authorizing service
14 contracts be added by printer at time of sale;
15 authorizing the Insurance Commissioner to exempt
16 forms or documents from requirements under certain
17 circumstances; defining additional circumstances as
18 unfair methods of competition and unfair or deceptive
19 acts or practices; subjecting certain claim to
20 examination; requiring claim file contents; providing
21 inquiry and examination procedures; providing
22 penalty; providing procedures for cease and desist
23 orders; providing hearing and judicial review
24 procedures; providing for recovery of attorney fees;
providing for codification; and providing an
effective date.

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

SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L.
2012 (15 O.S. Supp. 2015, Section 141.13), is amended to read as
follows:

1 Section 141.13 A. No service warranty form or related form
2 shall be issued or used in this state unless the form has been filed
3 with and approved by the Insurance Commissioner.

4 B. Each filing of a form shall be made not less than thirty
5 (30) days in advance of its issuance or use. At the expiration of
6 thirty (30) days from date of filing, a form so filed shall be
7 deemed approved unless prior thereto it has been affirmatively
8 disapproved by written order of the Commissioner.

9 C. Each service warranty contract shall contain a cancellation
10 provision. In the event the contract is canceled by the warranty
11 holder, return of the provider fee shall be based upon ninety
12 percent (90%) of the unearned pro rata provider fee less the actual
13 cost of any service provided under the service warranty contract.
14 In the event the contract is canceled by the association, return of
15 premium shall be based upon one hundred percent (100%) of unearned
16 pro rata provider fee less the actual cost of any service provided
17 under the service warranty contract.

18 D. Service contracts shall state the name ~~and~~, address and
19 license number of the ~~provider~~ service warranty association and
20 shall identify any administrator if different from the ~~provider~~
21 service warranty association, the service contract seller and the
22 service contract holder to the extent that the name of the service
23 contract holder has been furnished by the service contract holder.
24 ~~The identities of the parties are not required to~~ For service

1 contracts issued on and after July 1, 2017, the identity of the
2 service warranty association and its license number shall either be
3 preprinted on the service contract and may be or added to the
4 service contract by printer at the time of sale so consumers can
5 clearly identify the obligor of the service contract. Information
6 to be printed at the time of sale shall be indicated as such at the
7 time the service contract is filed for approval and a "Jane Doe"
8 specimen shall accompany the service contract illustrating how the
9 service contract will look after printing.

10 E. The Commissioner shall disapprove any form filed pursuant to
11 this section if the form:

- 12 1. Violates the Service Warranty Act;
- 13 2. Is misleading in any respect; or
- 14 3. Is reproduced so that any material provision is
15 substantially illegible.

16 F. The Insurance Commissioner may, by order, exempt from the
17 requirements of this section for so long as he or she deems proper
18 any document or form or type thereof as specified in such order, to
19 which, in his or her discretion, this section may not practicably be
20 applied, or the filing and approval of which are, in his or her
21 opinion, not desirable or necessary for the protection of the
22 public.

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1 SECTION 2. AMENDATORY Section 26, Chapter 150, O.S.L.
2 2012 (15 O.S. Supp. 2015, Section 141.26), is amended to read as
3 follows:

4 Section 141.26 For purposes of the Service Warranty Act, the
5 following methods, acts, or practices are defined as unfair methods
6 of competition and unfair or deceptive acts or practices:

7 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE
8 WARRANTIES - Knowingly making, issuing, circulating, or causing to
9 be made, issued, or circulated, any estimate, illustration,
10 circular, statement, sales presentation, omission, or comparison
11 which:

- 12 a. misrepresents the benefits, advantages, conditions, or
13 terms of any service warranty contract,
- 14 b. is misleading or is a misrepresentation as to the
15 financial condition of any person,
- 16 c. uses any name or title of any contract misrepresenting
17 the true nature thereof, or
- 18 d. is a misrepresentation for the purpose of inducing, or
19 tending to induce, the lapse, forfeiture, exchange,
20 conversion, or surrender of any service warranty
21 contract;

22 2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly
23 making, publishing, disseminating, circulating, or placing before
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1 the public, or causing, directly or indirectly, to be made,
2 published, disseminated, circulated, or placed before the public:

- 3 a. in a newspaper, magazine, or other publication,
- 4 b. in the form of a notice, circular, pamphlet, letter,
5 or poster,
- 6 c. over any radio or television station, or
- 7 d. in any other way,

8 an advertisement, announcement, or statement containing any
9 assertion, representation, or statement with respect to the business
10 of service warranty, which assertion, representation, or statement
11 is untrue, deceptive, or misleading;

12 3. DEFAMATION - Knowingly making, publishing, disseminating, or
13 circulating, directly or indirectly, or aiding, abetting, or
14 encouraging the making, publishing, disseminating, or circulating
15 of, any oral or written statement, or any pamphlet, circular,
16 article, or literature, which is false or maliciously critical of,
17 or derogatory to, any person and which is calculated to injure such
18 person;

19 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- 20 a. filing with any supervisory or other public official,
- 21 b. making, publishing, disseminating, or circulating,
- 22 c. delivering to any person,
- 23 d. placing before the public, or

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1 e. causing, directly or indirectly, to be made,
2 published, disseminated, circulated, delivered to any
3 person, or placed before the public,
4 any false statement, or ~~f.~~ making any false entry of a material fact
5 in any book, report, or statement of any person;

6 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- 7 a. attempting to settle claims on the basis of an
8 application or any other material document which was
9 altered without notice to, or knowledge or consent of,
10 the warranty holder,
- 11 b. making a material misrepresentation to the warranty
12 holder for the purpose and with the intent of
13 effecting settlement of such claims, loss, or damage
14 under such contract on less favorable terms than those
15 provided in, and contemplated by, such contract, or
- 16 c. committing or performing with such frequency as to
17 indicate a general business practice any of the
18 following practices:
- 19 (1) failure properly to investigate claims,
 - 20 (2) misrepresentation of pertinent facts or contract
21 provisions relating to coverages at issue,
 - 22 (3) failure to acknowledge and act promptly upon
23 communications with respect to claims,
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- 1 (4) denial of claims without conducting reasonable
2 investigations based upon available information,
3 (5) failure to affirm or deny coverage of claims upon
4 written request of the warranty holder within a
5 reasonable time after proof-of-loss statements
6 have been completed, or
7 (6) failure to promptly provide a reasonable
8 explanation to the warranty holder of the basis
9 in the contract in relation to the facts or
10 applicable law for denial of a claim or for the
11 offer of a compromise settlement;

12 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

13 Failing to maintain a record of each complaint received for a three-
14 year period after the date of the receipt of the written complaint;
15 ~~and~~

16 7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to
17 issue a contract solely because of an individual's race, color,
18 creed, marital status, sex, or national origin; and

19 8. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE -

20 Failing to provide a consumer with a complete sample copy of the
21 terms and conditions of the service warranty contract prior to the
22 time of sale upon a request for the same by the consumer. A service
23 warranty association may comply with the provisions of this
24 paragraph by providing the consumer with a sample copy of the terms

1 and conditions of the service warranty contract or by directing the
2 consumer to a website that displays a complete sample of the terms
3 and conditions of the contract.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 141.33 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Claim files of service warranty associations licensed
8 pursuant to the Service Warranty Act shall be subject to examination
9 by the Insurance Commissioner or by duly appointed designees. The
10 claim files shall contain all notes and workpapers pertaining to a
11 claim in such detail that pertinent events and the dates of the
12 events can be reconstructed. In addition, the Commissioner and
13 authorized employees and examiners shall have access to any files of
14 a service warranty association that may relate to a particular
15 complaint under investigation or to an inquiry or examination by the
16 Insurance Department.

17 B. Every service warranty association, upon receipt of any
18 inquiry from the Commissioner, shall, within thirty (30) days from
19 the date of the inquiry, furnish the Commissioner with an adequate
20 response to the inquiry.

21 C. Every service warranty association, upon receipt of any
22 pertinent written communication including, but not limited to,
23 electronic mail or other forms of written electronic communication
24 or documentation by the service warranty association of a verbal

1 communication from a claimant which reasonably suggests that a
2 response is expected, shall, within thirty (30) days after receipt
3 thereof, furnish the claimant with an adequate response to the
4 communication.

5 D. Any violation by a service warranty association of this
6 section shall subject the service warranty association to discipline
7 including a civil penalty of not less than One Hundred Dollars
8 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00).

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 141.34 of Title 15, unless there
11 is created a duplication in numbering, reads as follows:

12 The Insurance Commissioner may issue a cease and desist order,
13 ex parte, if:

14 1. The Commissioner believes that:

15 a. an unauthorized service warranty association is
16 engaging in the business of service warranties in
17 violation of the Service Warranty Act, or

18 b. an unauthorized person engaged in the business of
19 service warranties acting in violation of the Service
20 Warranty Act is committing an unfair method of
21 competition or an unfair or deceptive act or practice
22 in violation of Section 141.26 of Title 15 of the
23 Oklahoma Statutes; or
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1 2. It appears to the Commissioner that the alleged conduct is
2 fraudulent or hazardous or creates an immediate danger to the public
3 safety or is causing or can be reasonably expected to cause
4 significant, imminent and irreparable public injury.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 141.35 of Title 15, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Upon issuance of an emergency cease and desist order under
9 Section 4 of this act, the Insurance Commissioner shall serve on the
10 person affected by the order, by registered or certified mail,
11 return receipt requested, to the person's last-known address, or by
12 other lawful means, an order that contains a statement of the
13 charges and requires the person immediately to cease and desist from
14 the acts, methods or practices stated.

15 B. 1. If a person affected by an emergency cease and desist
16 order seeks to contest that order, the person may request a hearing
17 before the Commissioner. The person affected must request the
18 hearing not later than thirty (30) days after the date on which the
19 person receives the order. A request to contest an order shall be
20 in writing and directed to the Commissioner and shall state the
21 grounds for the request to set aside or modify the order.

22 2. On receiving the request for a hearing, the Commissioner
23 shall serve notice of the time and place of the hearing at which the
24 person requesting the hearing shall have the opportunity to show

1 cause why the order should not be affirmed. The hearing shall be
2 held not later than ten (10) days after the date the Commissioner
3 receives the request for a hearing unless the parties mutually agree
4 to a later hearing date.

5 3. Pending the hearing, an emergency cease and desist order
6 shall continue in full force and effect unless the order is stayed
7 by the Commissioner.

8 4. The hearing on the order shall be conducted according to the
9 procedures for contested cases under the Administrative Procedures
10 Act.

11 5. At the hearing, the Commissioner shall affirm, modify or set
12 aside in whole or in part the emergency cease and desist order.

13 C. A person aggrieved by a final order and decision of the
14 Commissioner may seek judicial review pursuant to Section 318 of
15 Title 75 of the Oklahoma Statutes.

16 D. The Commissioner may recover reasonable attorney fees if
17 judicial action is necessary for enforcement of the order.

18 E. A cease and desist order is final thirty-one (31) days after
19 the date it is received if the person affected by the order does not
20 request a hearing as provided by subsection B of this section.

21 SECTION 6. This act shall become effective November 1, 2016.

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