

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1142

By: Quinn of the Senate

3 and

4 Mulready of the House

5

6

7 An Act relating to service warranties; amending
8 Sections 2, Chapter 150, O.S.L. 2012, as last amended
9 by Section 1, Chapter 10, O.S.L. 2017, 7, Chapter
10 150, O.S.L. 2012, as amended by Section 4, Chapter
11 10, O.S.L. 2017, 11, Chapter 150, O.S.L. 2012, 14,
12 Chapter 150, O.S.L. 2012, as amended by Section 6,
13 Chapter 10, O.S.L. 2017 and 15, Chapter 150, O.S.L.
14 2012 (15 O.S. Supp. 2017, Sections 141.2, 141.7,
15 141.11, 141.14 and 141.15), which relate to
16 definitions, audited financial statements, duration
17 of suspension, annual statement filing and
18 examinations of service warranty associations;
19 modifying definitions; requiring certain financial
20 statements in certain application; requiring certain
21 financial statements be filed with Insurance
22 Commissioner under certain circumstances; updating
23 statutory references; and providing an effective
24 date.

18 AMENDMENT NO. 1. Replace the title, enacting clause and entire bill
19 and insert

20

21 "An Act relating to service warranties; amending
22 Section 2, Chapter 150, O.S.L. 2012, as last amended
23 by Section 1, Chapter 10, O.S.L. 2017, Section 7,
24 Chapter 150, O.S.L. 2012, as amended by Section 4,
Chapter 10, O.S.L. 2017, Section 9, Chapter 150,
O.S.L. 2012, Section 11, Chapter 150, O.S.L. 2012,
Section 14, Chapter 150, O.S.L. 2012, as amended by

1 Section 6, Chapter 10, O.S.L. 2017 and Section 15,
2 Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2017,
3 Sections 141.2, 141.7, 141.9, 141.11, 141.14 and
4 141.15), which relate to the Service Warranty Act;
5 modifying definitions; requiring certain financial
6 statements be audited or verified under oath under
7 certain circumstances; specifying certain insolvent
8 or impaired associations may have license revoked,
9 suspended or not renewed; specifying financial
10 statements shall be filed by certain associations;
11 modifying form and principles to be used for filing
12 certain financial statements; modifying statutory
13 reference; and providing an effective date.

14
15
16
17
18
19
20
21
22
23
24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 150, O.S.L.
2012, as last amended by Section 1, Chapter 10, O.S.L. 2017 (15 O.S.
Supp. 2017, Section 141.2), is amended to read as follows:

Section 141.2 As used in the Service Warranty Act:

1. "Commissioner" means the Insurance Commissioner;
2. "Consumer product" means tangible personal property
primarily used for personal, family, or household purposes;
3. "Department" means the Insurance Department;
4. "Gross income" means the total amount of revenue received in
connection with business-related activity;
5. "Gross written provider fee" means the total amount of
consideration, inclusive of commissions, paid by a consumer for a
service warranty issued in this state;
6. "Impaired" means having liabilities in excess of assets;

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

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

10 a. (1) for an association's relying on subsection A of
11 Section 141.6 of this title, if the association's
12 total liabilities exceed the association's total
13 assets excluding goodwill, franchises, customer
14 lists, patents or trademarks, and receivables
15 from or advances to officers, directors,
16 employees, salesmen, and affiliated companies.
17 In order to include receivables from affiliated
18 companies as assets as defined pursuant to this
19 subparagraph and paragraph 12 of this section,
20 the service warranty association shall provide a
21 written guarantee to assure repayment of all
22 receivables, loans, and advances from affiliated
23 companies. The written guarantee must be made by
24 a guaranteeing organization which:

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

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

14 ~~(5) the receivables are maintained as cash or as~~
15 ~~marketable securities as calculated in accordance~~
16 ~~with statutory accounting principles, or~~

17 (2) for an association relying on subsection B of
18 Section 141.6 of this title, if the association's
19 total liabilities exceed the association's total
20 assets as calculated in accordance with generally
21 accepted accounting principles,

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~~ key
17 fob in the event that the key or ~~key-fob~~ key fob
18 becomes inoperable 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.
24

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 protection product as
6 defined in this section;

7 11. "Motor vehicle ancillary protection product" or "ancillary
8 protection product" means a protective chemical substance, device or
9 system 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 warranty 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 protection
4 product shall include, but not be limited to, protective chemicals,
5 alarm systems, body-part-marking products, steering locks, window-
6 etch products, pedal and ignition locks, fuel and ignition kill
7 switches and electronic, radio or satellite tracking devices.
8 Ancillary protection product does not include fuel additives, oil
9 additives or other chemical products applied to the engine,
10 transmission, or fuel 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 association~~
18 ~~unless a written guaranty assures repayment and meets the conditions~~
19 ~~specified in subparagraph a of paragraph 8 of this section;~~

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

22 14. "Provider fee" means the total consideration received or to
23 be received, including sales commissions, by whatever name called,
24 by a service warranty association for, or related to, the issuance

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

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

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

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

1 or more motor vehicle ancillary service(s) as defined by this
2 section. 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~~ this state for
6 at least 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,

22 f. service warranties are not insurance in this state or
23 otherwise regulated under the Insurance Code, and
24

1 g. motor service club contracts governed under Article 31
2 of Title 36 of the Oklahoma Statutes are expressly
3 excluded from this definition;

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

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

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

17 SECTION 2. AMENDATORY Section 7, Chapter 150, O.S.L.
18 2012, as amended by Section 4, Chapter 10, O.S.L. 2017 (15 O.S.
19 Supp. 2017, Section 141.7), is amended to read as follows:

20 Section 141.7 A. An application for license as a service
21 warranty association shall be made to, and filed with, the Insurance
22 Commissioner on printed forms as prescribed and furnished by the
23 Insurance Commissioner.

1 B. In addition to information relative to its qualifications as
2 required under Section 141.5 of this title, the Commissioner may
3 require that the application show:

4 1. The location of the home office of the applicant;

5 2. The name and residence address of each director or officer
6 of the applicant; and

7 3. Other pertinent information as may be required by the
8 Commissioner.

9 C. The Commissioner may require that the application, when
10 filed, be accompanied by:

11 1. A copy of the articles of incorporation of the applicant,
12 certified by the public official having custody of the original, and
13 a copy of the bylaws of the applicant, certified by the chief
14 executive officer of the applicant;

15 2. A copy of the most recent financial statement of the
16 applicant, which must be:

17 a. audited if the applicant complies with the
18 requirements of subsection A of Section 141.6 of this
19 title, or

20 b. verified under oath of at least two of its principal
21 officers if the applicant utilizes an insurance policy
22 which satisfies the requirements of subsection B of
23 Section 141.6 of this title; and

1 3. A license fee as required pursuant to Section 141.4 of this
2 title.

3 D. Upon completion of the application for license, the
4 Commissioner shall examine the application and make such further
5 investigation of the applicant as the Commissioner deems advisable.
6 If the Commissioner finds that the applicant is qualified, the
7 Commissioner shall issue to the applicant a license as a service
8 warranty association. If the Commissioner does not find the
9 applicant to be qualified the Commissioner shall refuse to issue the
10 license and shall give the applicant written notice of the refusal,
11 setting forth the grounds of the refusal.

12 E. 1. Any entity that claims one or more of the exclusions
13 from the definition of service warranty provided in paragraph 17 of
14 Section 141.2 of this title shall file audited financial statements
15 and other information as requested by the Commissioner to document
16 and verify that the contracts of the entity are not included within
17 the definition of service warranty. Financial statements are not
18 required to be filed by an entity claiming one of the exclusions set
19 forth in subparagraphs ~~(a) and (b)~~ a and b of paragraph 17 of
20 Section 141.2 of this title.

21 2. Any entity that begins claiming an exclusion exemption as
22 provided by paragraph 17 of Section 141.2 of this title shall make
23 the filing required by subsection ~~E~~ A of this section prior to
24 conducting or continuing business in this state.

1 3. Any entity approved for an exclusion exemption as provided
2 by paragraph 17 of Section 141.2 of this title may be required by
3 the Commissioner to provide subsequent information ascertained by
4 the Commissioner to be necessary to determine continued
5 qualification for an exclusion exemption as provided by paragraph 17
6 of Section 141.2 of this title. Financial statements shall not be
7 required to be filed by an entity claiming one of the exclusions set
8 forth in subparagraphs ~~(a) and (b)~~ a and b of paragraph 17 of
9 Section 141.2 of this title.

10 4. Other information requested by the Commissioner may include,
11 but is not limited to, SEC filings, audited financial statements of
12 affiliates, and organizational data and organizational charts.
13 Financial statements shall not be required to be filed by an entity
14 claiming one of the exclusions set forth in subparagraphs ~~(a) and~~
15 ~~(b)~~ a and b of paragraph 17 of Section 141.2 of this title.

16 SECTION 3. AMENDATORY Section 9, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2017, Section 141.9), is amended to read as
18 follows:

19 Section 141.9 A. The license of any service warranty
20 association may be revoked or suspended, or the Insurance
21 Commissioner may refuse to renew any such license, if it is
22 determined that the association has violated any lawful rule or
23 order of the Commissioner or any provision of the Service Warranty
24

1 Act, or if the association is determined to be insolvent or
2 impaired.

3 B. The license of any service warranty association shall be
4 suspended or revoked if it is determined that such association:

5 1. Is ~~insolvent or impaired, or is~~ in any condition as would
6 render its further transaction of service warranties in this state
7 hazardous or injurious to its warranty holders or to the public;

8 2. Has refused to be examined or to produce its accounts,
9 records, and files for examination, or if any of its officers have
10 refused to give information with respect to its affairs or have
11 refused to perform any other legal obligation as to such
12 examination, when required by the Commissioner;

13 3. Has failed to pay any final judgment rendered against it in
14 this state within sixty (60) days after the judgment became final;

15 4. Has, without just cause, refused to pay proper claims
16 arising under its service warranties or, without just cause, has
17 compelled warranty holders to accept less than the amount due them,
18 or to employ attorneys, or to bring suit against the association to
19 secure full payment or settlement of such claims;

20 5. Is affiliated with and under the same general management or
21 interlocking directorate or ownership as another service warranty
22 association which transacts direct warranties in this state without
23 having a license; or

24

1 6. Is using such methods or practices in the conduct of its
2 business as would render its further transaction of service
3 warranties in this state hazardous or injurious to its warranty
4 holders or to the public.

5 C. The Commissioner may at his or her discretion and without
6 advance notice or hearing immediately suspend the license of any
7 service warranty association if the Commissioner finds that one or
8 more of the following circumstances exist:

9 1. The association is insolvent or impaired;

10 2. The reserve account required by the Service Warranty Act is
11 not being maintained;

12 3. A proceeding for receivership, conservatorship
13 rehabilitation or any other delinquency proceeding regarding the
14 association has been commenced in any state; or

15 4. The financial condition or business practices of the
16 association otherwise pose an imminent threat to the public health,
17 safety, or welfare of the residents of this state.

18 D. A violation of the Service Warranty Act by an insurer is
19 grounds for suspension or revocation of the insurer's certificate of
20 authority in this state.

21 SECTION 4. AMENDATORY Section 11, Chapter 150, O.S.L.
22 2012 (15 O.S. Supp. 2017, Section 141.11), is amended to read as
23 follows:

24

1 Section 141.11 A. A suspension of the license of a service
2 warranty association shall be for such period, not to exceed one (1)
3 year, as is fixed in the order of suspension, unless such suspension
4 or the order upon which the suspension is based is modified,
5 rescinded, or reversed.

6 B. During the period of suspension, the association shall file
7 ~~its annual statement~~ any financial statements and pay any fees as
8 required by the Service Warranty Act as if the license had been
9 continued in full force.

10 C. Upon expiration of the suspension period, if within such
11 period the license has not otherwise terminated, the license of the
12 association shall automatically be reinstated, unless the causes of
13 the suspension have not been removed or the association is otherwise
14 not in compliance with the requirements of the Service Warranty Act.

15 SECTION 5. AMENDATORY Section 14, Chapter 150, O.S.L.
16 2012, as amended by Section 6, Chapter 10, O.S.L. 2017 (15 O.S.
17 Supp. 2017, Section 141.14), is amended to read as follows:

18 Section 141.14 A. In addition to the license fees provided in
19 the Service Warranty Act for service warranty associations each
20 service warranty association and insurer shall annually, on or
21 before the first day of May, file with the Insurance Commissioner
22 its annual financial statement ~~in the form prescribed by the~~
23 ~~Commissioner~~ showing all gross written provider fees or assessments
24 received by it in connection with the issuance of service warranties

1 in this state during the preceding calendar year and other relevant
2 financial information as deemed necessary by the Commissioner, ~~using~~
3 ~~accounting principles which will enable the Commissioner to~~
4 ~~ascertain whether the financial requirements set forth in Section~~
5 ~~141.7 of this title have been satisfied.~~ The financial statements
6 required by this subsection must be:

7 1. Audited and prepared in accordance with statutory accounting
8 principles if the applicant complies with the requirements of
9 subsection A of Section 141.6 of this title; or

10 2. Verified under oath of at least two of its principal
11 officers and prepared in accordance with generally accepted
12 accounting principles if the applicant utilizes an insurance policy
13 which satisfies the requirements of subsection B of Section 141.6 of
14 this title.

15 B. The Commissioner may levy a fine of up to One Hundred
16 Dollars (\$100.00) a day for each day an association neglects to file
17 ~~the annual~~ its financial statement in the form and within the time
18 provided by the Service Warranty Act.

19 C. In addition to ~~an~~ the annual statement financial statements
20 required to be filed by subsection A of this section, the
21 Commissioner may require of licensees, under oath and in the form
22 prescribed by it, quarterly statements or special reports which the
23 Commissioner deems necessary for the proper supervision of licensees
24 under the Service Warranty Act.

1 D. Provider fees and assessments received by associations and
2 insurers for service warranties shall not be subject to the premium
3 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,
4 but shall be subject to an administrative fee of equal to two
5 percent (2%) of the gross provider fee received on the sale of all
6 service warranties issued in this state during the preceding
7 calendar quarter. The fees shall be paid quarterly to the Insurance
8 Commissioner. However, licensed associations, licensed insurers and
9 entities with applications for licensure as a service warranty
10 association pending with the Department that have contractual
11 liability insurance in place as of March 31, 2009, from an insurer
12 which satisfies the requirements of subsections B and C of Section
13 ~~141.7~~ 141.6 of this title and which covers one hundred percent
14 (100%) of the claims exposure of the association or insurer on all
15 contracts written may elect to pay an annual administrative fee of
16 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent
17 administrative fee.

18 SECTION 6. AMENDATORY Section 15, Chapter 150, O.S.L.
19 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as
20 follows:

21 Section 141.15 A. Service warranty associations licensed
22 pursuant to the Service Warranty Act are subject to periodic
23 examination by the Insurance Commissioner, in the same manner and
24 subject to the same terms and conditions that apply to insurers.

1 B. The Commissioner is not required to examine an association
2 that has less than Twenty Thousand Dollars (\$20,000.00) in gross
3 written provider fees as reflected in its most recent annual
4 financial statement. The Commissioner may examine such an
5 association if the Commissioner has reason to believe that the
6 association may be in violation of the Service Warranty Act or is
7 otherwise in an unsound financial condition. If the Commissioner
8 examines such an association, the examination fee shall not exceed
9 five percent (5%) of the gross written provider fees of the
10 association.

11 SECTION 7. This act shall become effective November 1, 2018."

12 Passed the House of Representatives the 25th day of April, 2018.

13
14
15 _____
16 Presiding Officer of the House of
Representatives

17 Passed the Senate the ____ day of _____, 2018.

18
19
20 _____
21 Presiding Officer of the Senate

22
23
24