

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1142

By: Quinn of the Senate

and

Mulready of the House

COMMITTEE SUBSTITUTE

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

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;

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

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

- 1 a. (1) for an association's relying on subsection A of
2 Section 141.6 of this title, if the association's
3 total liabilities exceed the association's total
4 assets as calculated in accordance with statutory
5 accounting principles, or excluding goodwill,
6 franchises, customer lists, patents or
7 trademarks, and receivables from or advances to
8 officers, directors, employees, salesmen, and
9 affiliated companies. In order to include
10 receivables from affiliated companies as assets
11 as defined pursuant to this subparagraph and
12 paragraph 12 of this section, the service
13 warranty association shall provide a written
14 guarantee to assure repayment of all receivables,
15 loans, and advances from affiliated companies.
16 The written guarantee must be made by a
17 guaranteeing organization which:
- 18 ~~(1)~~ has been in continuous operation for ten (10)
19 years or more and has net assets in excess of
20 Five Hundred Million Dollars (\$500,000,000.00),
- 21 ~~(2)~~ submits a guarantee on a form acceptable to the
22 Insurance Commissioner that contains a provision
23 which requires that the guarantee be irrevocable,
24 unless the guaranteeing organization can

~~demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,~~

~~(3) initially submits a statement from a certified public accountant of the guaranteeing organization attesting that the net assets of the guaranteeing organization meet or exceed the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization,~~

~~(4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, with the annual statement required by Section 141.14 of this title, a statement from an independent certified public accountant attesting that the net assets of the guaranteeing organization meet or exceed the net assets requirement as provided in division (1) of this~~

~~subparagraph and that the net assets of the
guaranteeing organization exceed the amount of
the receivable of the service warranty
association that is being guaranteed by the
guaranteeing organization, and~~

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

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

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

c. the association has knowingly overvalued its assets;

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

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

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

b. the removal of dents, dings or creases on a motor
vehicle that can be repaired using the process of

- 1 paintless dent removal without affecting the existing
2 paint finish and without replacement vehicle body
3 panels, sanding, bonding or painting,
- 4 c. the repair of chips or cracks in or the replacement of
5 motor vehicle windshields as a result of damage caused
6 by road hazards,
- 7 d. the replacement of a motor vehicle key or ~~key-fob~~ key
8 fob in the event that the key or ~~key-fob~~ key fob
9 becomes inoperable or is lost or stolen,
- 10 e. payment to or services provided under the terms of an
11 ancillary protection product, or
- 12 f. other services which may be approved by the
13 Commissioner, if not inconsistent with other
14 provisions of this act.

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

21 11. "Motor vehicle ancillary protection product" or "ancillary
22 protection product" means a protective chemical substance, device or
23 system that:

- 24 a. is installed on or applied to a motor vehicle,

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

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

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

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

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

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

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 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. The term
14 "service warranty" includes a contract or agreement to provide one
15 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~~ this state for
20 at least 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,

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

14 g. motor service club contracts governed under Article 31
15 of Title 36 of the Oklahoma Statutes are expressly
16 excluded from this definition;

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

22 19. "Warrantor" means any service warranty association engaged
23 in the sale of service warranties and deriving not more than fifty
24

1 percent (50%) of its gross income from the sale of service
2 warranties; and

3 20. "Warranty seller" means any service warranty association
4 engaged in the sale of service warranties and deriving more than
5 fifty percent (50%) of its gross income from the sale of service
6 warranties.

7 SECTION 2. AMENDATORY Section 7, Chapter 150, O.S.L.
8 2012, as amended by Section 4, Chapter 10, O.S.L. 2017 (15 O.S.
9 Supp. 2017, Section 141.7), is amended to read as follows:

10 Section 141.7 A. An application for license as a service
11 warranty association shall be made to, and filed with, the Insurance
12 Commissioner on printed forms as prescribed and furnished by the
13 Insurance Commissioner.

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

- 17 1. The location of the home office of the applicant;
18 2. The name and residence address of each director or officer
19 of the applicant; and
20 3. Other pertinent information as may be required by the
21 Commissioner.

22 C. The Commissioner may require that the application, when
23 filed, be accompanied by:
24

1 1. A copy of the articles of incorporation of the applicant,
2 certified by the public official having custody of the original, and
3 a copy of the bylaws of the applicant, certified by the chief
4 executive officer of the applicant;

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

7 a. audited if the applicant complies with the
8 requirements of subsection A of Section 141.6 of this
9 title, or

10 b. verified under oath of at least two of its principal
11 officers if the applicant utilizes an insurance policy
12 which satisfies the requirements of subsection B of
13 Section 141.6 of this title; and

14 3. A license fee as required pursuant to Section 141.4 of this
15 title.

16 D. Upon completion of the application for license, the
17 Commissioner shall examine the application and make such further
18 investigation of the applicant as the Commissioner deems advisable.
19 If the Commissioner finds that the applicant is qualified, the
20 Commissioner shall issue to the applicant a license as a service
21 warranty association. If the Commissioner does not find the
22 applicant to be qualified the Commissioner shall refuse to issue the
23 license and shall give the applicant written notice of the refusal,
24 setting forth the grounds of the refusal.

1 E. 1. Any entity that claims one or more of the exclusions
2 from the definition of service warranty provided in paragraph 17 of
3 Section 141.2 of this title shall file audited financial statements
4 and other information as requested by the Commissioner to document
5 and verify that the contracts of the entity are not included within
6 the definition of service warranty. Financial statements are not
7 required to be filed by an entity claiming one of the exclusions set
8 forth in subparagraphs (a) and (b) of paragraph 17 of Section 141.2
9 of this title.

10 2. Any entity that begins claiming an exclusion exemption as
11 provided by paragraph 17 of Section 141.2 of this title shall make
12 the filing required by subsection E of this section prior to
13 conducting or continuing business in this state.

14 3. Any entity approved for an exclusion exemption as provided
15 by paragraph 17 of Section 141.2 of this title may be required by
16 the Commissioner to provide subsequent information ascertained by
17 the Commissioner to be necessary to determine continued
18 qualification for an exclusion exemption as provided by paragraph 17
19 of Section 141.2 of this title. Financial statements shall not be
20 required to be filed by an entity claiming one of the exclusions set
21 forth in subparagraphs (a) and (b) of paragraph 17 of Section 141.2
22 of this title.

23 4. Other information requested by the Commissioner may include,
24 but is not limited to, SEC filings, audited financial statements of

1 affiliates, and organizational data and organizational charts.
2 Financial statements shall not be required to be filed by an entity
3 claiming one of the exclusions set forth in subparagraphs (a) and
4 (b) of paragraph 17 of Section 141.2 of this title.

5 SECTION 3. AMENDATORY Section 9, Chapter 150, O.S.L.
6 2012 (15 O.S. Supp. 2017, Section 141.9), is amended to read as
7 follows:

8 Section 141.9 A. The license of any service warranty
9 association may be revoked or suspended, or the Insurance
10 Commissioner may refuse to renew any such license, if it is
11 determined that the association has violated any lawful rule or
12 order of the Commissioner or any provision of the Service Warranty
13 Act, or if the association is determined to be insolvent or
14 impaired.

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

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

20 2. Has refused to be examined or to produce its accounts,
21 records, and files for examination, or if any of its officers have
22 refused to give information with respect to its affairs or have
23 refused to perform any other legal obligation as to such
24 examination, when required by the Commissioner;

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

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

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

12 6. Is using such methods or practices in the conduct of its
13 business as would render its further transaction of service
14 warranties in this state hazardous or injurious to its warranty
15 holders or to the public.

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

20 1. The association is insolvent or impaired;

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

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

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

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

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

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

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

22 C. Upon expiration of the suspension period, if within such
23 period the license has not otherwise terminated, the license of the
24 association shall automatically be reinstated, unless the causes of

1 the suspension have not been removed or the association is otherwise
2 not in compliance with the requirements of the Service Warranty Act.

3 SECTION 5. AMENDATORY Section 14, Chapter 150, O.S.L.
4 2012, as amended by Section 6, Chapter 10, O.S.L. 2017 (15 O.S.
5 Supp. 2017, Section 141.14), is amended to read as follows:

6 Section 141.14 A. In addition to the license fees provided in
7 the Service Warranty Act for service warranty associations each
8 service warranty association and insurer shall annually, on or
9 before the first day of May, file with the Insurance Commissioner
10 its annual financial statement ~~in the form prescribed by the~~
11 ~~Commissioner~~ showing all gross written provider fees or assessments
12 received by it in connection with the issuance of service warranties
13 in this state during the preceding calendar year and other relevant
14 financial information as deemed necessary by the Commissioner, ~~using~~
15 ~~accounting principles which will enable the Commissioner to~~
16 ~~ascertain whether the financial requirements set forth in Section~~
17 ~~141.7 of this title have been satisfied.~~ The financial statements
18 required by this subsection must be:

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

22 2. Verified under oath of at least two of its principal
23 officers and prepared in accordance with generally accepted
24 accounting principles if the applicant utilizes an insurance policy

1 which satisfies the requirements of subsection B of Section 141.6 of
2 this title.

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

7 C. In addition to ~~an the annual statement~~ financial statements
8 required to be filed by subsection A of this section, the
9 Commissioner may require of licensees, under oath and in the form
10 prescribed by it, quarterly statements or special reports which the
11 Commissioner deems necessary for the proper supervision of licensees
12 under the Service Warranty Act.

13 D. Provider fees and assessments received by associations and
14 insurers for service warranties shall not be subject to the premium
15 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,
16 but shall be subject to an administrative fee of equal to two
17 percent (2%) of the gross provider fee received on the sale of all
18 service warranties issued in this state during the preceding
19 calendar quarter. The fees shall be paid quarterly to the Insurance
20 Commissioner. However, licensed associations, licensed insurers and
21 entities with applications for licensure as a service warranty
22 association pending with the Department that have contractual
23 liability insurance in place as of March 31, 2009, from an insurer
24 which satisfies the requirements of subsections B and C of Section

1 ~~141.7~~ 141.6 of this title and which covers one hundred percent
2 (100%) of the claims exposure of the association or insurer on all
3 contracts written may elect to pay an annual administrative fee of
4 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent
5 administrative fee.

6 SECTION 6. AMENDATORY Section 15, Chapter 150, O.S.L.
7 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as
8 follows:

9 Section 141.15 A. Service warranty associations licensed
10 pursuant to the Service Warranty Act are subject to periodic
11 examination by the Insurance Commissioner, in the same manner and
12 subject to the same terms and conditions that apply to insurers.

13 B. The Commissioner is not required to examine an association
14 that has less than Twenty Thousand Dollars (\$20,000.00) in gross
15 written provider fees as reflected in its most recent annual
16 financial statement. The Commissioner may examine such an
17 association if the Commissioner has reason to believe that the
18 association may be in violation of the Service Warranty Act or is
19 otherwise in an unsound financial condition. If the Commissioner
20 examines such an association, the examination fee shall not exceed
21 five percent (5%) of the gross written provider fees of the
22 association.

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

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