

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 1142

By: Quinn

COMMITTEE SUBSTITUTE

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

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 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

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 financial 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,

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

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.

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
22 policy which satisfies the requirements of subsection
23 B of Section 141.6 of this title; and
24

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) of paragraph 17 of Section 141.2
20 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 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) of paragraph 17 of Section 141.2
9 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) of paragraph 17 of Section 141.2 of this title.

16 SECTION 3. AMENDATORY Section 11, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2017, Section 141.11), is amended to read as
18 follows:

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23 rescinded, or reversed.

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

5 C. Upon expiration of the suspension period, if within such
6 period the license has not otherwise terminated, the license of the
7 association shall automatically be reinstated, unless the causes of
8 the suspension have not been removed or the association is otherwise
9 not in compliance with the requirements of the Service Warranty Act.

10 SECTION 4. AMENDATORY Section 14, Chapter 150, O.S.L.
11 2012, as amended by Section 6, Chapter 10, O.S.L. 2017 (15 O.S.
12 Supp. 2017, Section 141.14), is amended to read as follows:

13 Section 141.14. A. In addition to the license fees provided in
14 the Service Warranty Act for service warranty associations each
15 service warranty association and insurer shall annually, on or
16 before the first day of May, file with the Insurance Commissioner
17 its annual financial statement ~~in the form prescribed by the~~
18 ~~Commissioner~~ showing all gross written provider fees or assessments
19 received by it in connection with the issuance of service warranties
20 in this state during the preceding calendar year and other relevant
21 financial information as deemed necessary by the Commissioner, ~~using~~
22 ~~accounting principles which will enable the Commissioner to~~
23 ~~ascertain whether the financial requirements set forth in Section~~
24

1 ~~141.7 of this title have been satisfied.~~ The financial statements
2 required by this section shall be:

3 1. Audited and prepared in accordance with statutory accounting
4 principles, if the applicant complies with the requirements of
5 subsection A of Section 141.6 of this title; or

6 2. Verified under oath of at least two (2) of its principal
7 officers and prepared in accordance with generally accepted
8 accounting principles, if the applicant utilizes an insurance policy
9 which satisfies the requirements of subsection B of Section 141.6 of
10 this title.

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

15 C. In addition to ~~an~~ the annual ~~statement~~ financial statements
16 required to be filed by this act, the Commissioner may require of
17 licensees, under oath and in the form prescribed by it, quarterly
18 statements or special reports which the Commissioner deems necessary
19 for the proper supervision of licensees under the Service Warranty
20 Act.

21 D. Provider fees and assessments received by associations and
22 insurers for service warranties shall not be subject to the premium
23 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,
24 but shall be subject to an administrative fee of equal to two

1 percent (2%) of the gross provider fee received on the sale of all
2 service warranties issued in this state during the preceding
3 calendar quarter. The fees shall be paid quarterly to the Insurance
4 Commissioner. However, licensed associations, licensed insurers and
5 entities with applications for licensure as a service warranty
6 association pending with the Department that have contractual
7 liability insurance in place as of March 31, 2009, from an insurer
8 which satisfies the requirements of subsections B and C of Section
9 ~~141.7~~ 141.6 of this title and which covers one hundred percent
10 (100%) of the claims exposure of the association or insurer on all
11 contracts written may elect to pay an annual administrative fee of
12 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent
13 administrative fee.

14 SECTION 5. AMENDATORY Section 15, Chapter 150, O.S.L.
15 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as
16 follows:

17 Section 141.15. A. Service warranty associations licensed
18 pursuant to the Service Warranty Act are subject to periodic
19 examination by the Insurance Commissioner, in the same manner and
20 subject to the same terms and conditions that apply to insurers.

21 B. The Commissioner is not required to examine an association
22 that has less than Twenty Thousand Dollars (\$20,000.00) in gross
23 written provider fees as reflected in its most recent annual
24 financial statement. The Commissioner may examine such an

1 association if the Commissioner has reason to believe that the
2 association may be in violation of the Service Warranty Act or is
3 otherwise in an unsound financial condition. If the Commissioner
4 examines such an association, the examination fee shall not exceed
5 five percent (5%) of the gross written provider fees of the
6 association.

7 SECTION 6. This act shall become effective November 1, 2018.

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