HOUSE OF REPRESENTATIVES - FLOOR VERSION

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:

a. (1) for an association~~'s~~ relying on subsection A of Section 141.6 of this title, if the association's total liabilities exceed the association's total assets as calculated in accordance with statutory accounting principles, or ~~excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. In order to include receivables from affiliated companies as assets as defined pursuant to this subparagraph and paragraph 12 of this section, the service warranty association shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies. The written guarantee must be made by a guaranteeing organization which:~~

~~(1) has been in continuous operation for ten (10) years or more and has net assets in excess of Five Hundred Million Dollars ($500,000,000.00),~~

~~(2) submits a guarantee on a form acceptable to the Insurance Commissioner that contains a provision which requires that the guarantee be irrevocable, 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 paintless dent removal without affecting the existing paint finish and without replacement vehicle body panels, sanding, bonding or painting,

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

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

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

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

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

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

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

b. is designed to prevent loss or damage to a motor vehicle from a specific cause, and

c. includes, within or as an accompaniment to a service warranty, a written agreement that provides that, if the ancillary protection product fails to prevent loss or damage to a motor vehicle from a specific cause, the provider will pay to or on behalf of the service warranty holder specified incidental costs as a result of the failure of the ancillary protection product to perform pursuant to the terms of the ancillary protection product warranty. The reimbursement of incidental cost(s) promised under an ancillary protection product warranty must be tied to the purchase of a physical product that is formulated or designed to make the specified loss or damage from a specific cause less likely to occur.

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

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

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

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

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

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

17. "Service warranty" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair or replacement of property or indemnification for repair or replacement for the operational or structural failure due to a defect or failure in materials or workmanship, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, failure due to normal wear and tear, towing, rental and emergency road service, road hazard, power surge, and accidental damage from handling or as otherwise provided for in the contract or agreement. The term "service warranty" includes a contract or agreement to provide one or more motor vehicle ancillary service(s) as defined by this section. However:

a. maintenance service contracts under the terms of which there are no provisions for such indemnification are expressly excluded from this definition,

b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from an insurer licensed in the state, which covers one hundred percent (100%) of the claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,

c. the term "service warranty" does not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The association is insolvent or impaired;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/04/2018 - DO PASS, As Amended.