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February 12, 2018

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1142

By: Quinn

[service warranties - definitions - financial
statements - certain circumstances - 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;

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

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

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

18 c. the association has knowingly overvalued its assets;

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

21 10. "Motor vehicle ancillary service" includes any one or more
22 of the following services:
23
24

- 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

1 with the sale of a motor vehicle ancillary protection product as
2 defined in this section;

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

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

23 For purposes of this section, the term ancillary protection
24 product shall include, but not be limited to, protective chemicals,

1 alarm systems, body-part-marking products, steering locks, window-
2 etch products, pedal and ignition locks, fuel and ignition kill
3 switches and electronic, radio or satellite tracking devices.

4 Ancillary protection product does not include fuel additives, oil
5 additives or other chemical products applied to the engine,
6 transmission, or fuel system of a motor vehicle;

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

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

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

1 charged by the association, provided the repair is made before the
2 issuance and delivery of the warranty;

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

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

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

- 1 a. maintenance service contracts under the terms of which
2 there are no provisions for such indemnification are
3 expressly excluded from this definition,
- 4 b. those contracts issued solely by the manufacturer,
5 distributor, importer or seller of the product, or any
6 affiliate or subsidiary of the foregoing entities,
7 whereby such entity has contractual liability
8 insurance in place, from an insurer licensed in the
9 state, which covers one hundred percent (100%) of the
10 claims exposure on all contracts written without being
11 predicated on the failure to perform under such
12 contracts, are expressly excluded from this
13 definition,
- 14 c. the term "service warranty" does not include service
15 contracts entered into between consumers and nonprofit
16 organizations or cooperatives the members of which
17 consist of condominium associations and condominium
18 owners, which contracts require the performance of
19 repairs and maintenance of appliances or maintenance
20 of the residential property,
- 21 d. the term "service warranty" does not include
22 warranties, guarantees, extended warranties, extended
23 guarantees, contract agreements or any other service
24 contracts issued by a company which performs at least

1 seventy percent (70%) of the service work itself and
2 not through subcontractors, and which has been selling
3 and honoring such contracts in ~~Oklahoma~~ this state for
4 at least twenty (20) years,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 D. Upon completion of the application for license, the
23 Commissioner shall examine the application and make such further
24 investigation of the applicant as the Commissioner deems advisable.

1 If the Commissioner finds that the applicant is qualified, the
2 Commissioner shall issue to the applicant a license as a service
3 warranty association. If the Commissioner does not find the
4 applicant to be qualified the Commissioner shall refuse to issue the
5 license and shall give the applicant written notice of the refusal,
6 setting forth the grounds of the refusal.

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

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

20 3. Any entity approved for an exclusion exemption as provided
21 by paragraph 17 of Section 141.2 of this title may be required by
22 the Commissioner to provide subsequent information ascertained by
23 the Commissioner to be necessary to determine continued
24 qualification for an exclusion exemption as provided by paragraph 17

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

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

11 SECTION 3. AMENDATORY Section 11, Chapter 150, O.S.L.
12 2012 (15 O.S. Supp. 2017, Section 141.11), is amended to read as
13 follows:

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

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

23 C. Upon expiration of the suspension period, if within such
24 period the license has not otherwise terminated, the license of the

1 association shall automatically be reinstated, unless the causes of
2 the suspension have not been removed or the association is otherwise
3 not in compliance with the requirements of the Service Warranty Act.

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

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

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

23 2. Verified under oath of at least two (2) of its principal
24 officers and prepared in accordance with generally accepted

1 accounting principles, if the applicant utilizes an insurance policy
2 which satisfies the requirements of subsection B of Section 141.6 of
3 this title.

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

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

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

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

7 SECTION 5. AMENDATORY Section 15, Chapter 150, O.S.L.
8 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as
9 follows:

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

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

24

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

COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
February 12, 2018 - DO PASS AS AMENDED