

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1142

By: Quinn

AS INTRODUCED

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 (15 O.S. Supp. 2017, Section 141.2), 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), 11, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2017, Section 141.11), 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), and 15, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2017, Section 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 to be audited and submitted to 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 audited 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.  
24

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

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

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

1           designed to make the specified loss or damage from a  
2           specific cause less likely to occur.

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

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

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

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

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

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

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

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

1 or more motor vehicle ancillary service(s) as defined by this  
2 section. However:

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

1 guarantees, contract agreements or any other service  
2 contracts issued by a company which performs at least  
3 seventy percent (70%) of the service work itself and  
4 not through subcontractors, and which has been selling  
5 and honoring such contracts in ~~Oklahoma~~ this state for  
6 at least twenty (20) years,

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

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

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

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

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

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

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

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

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

- 4 1. The location of the home office of the applicant;
- 5 2. The name and residence address of each director or officer  
6 of the applicant; and
- 7 3. Other pertinent information as may be required by the  
8 Commissioner.

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

- 11 1. A copy of the articles of incorporation of the applicant,  
12 certified by the public official having custody of the original, and  
13 a copy of the bylaws of the applicant, certified by the chief  
14 executive officer of the applicant;
- 15 2. A copy of the most recent audited financial statement of the  
16 applicant, verified under oath of at least two of its principal  
17 officers; and
- 18 3. A license fee as required pursuant to Section 141.4 of this  
19 title.

20 D. Upon completion of the application for license, the  
21 Commissioner shall examine the application and make such further  
22 investigation of the applicant as the Commissioner deems advisable.  
23 If the Commissioner finds that the applicant is qualified, the  
24 Commissioner shall issue to the applicant a license as a service

1 warranty association. If the Commissioner does not find the  
2 applicant to be qualified the Commissioner shall refuse to issue the  
3 license and shall give the applicant written notice of the refusal,  
4 setting forth the grounds of the refusal.

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

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

18 3. Any entity approved for an exclusion exemption as provided  
19 by paragraph 17 of Section 141.2 of this title may be required by  
20 the Commissioner to provide subsequent information ascertained by  
21 the Commissioner to be necessary to determine continued  
22 qualification for an exclusion exemption as provided by paragraph 17  
23 of Section 141.2 of this title. Financial statements shall not be  
24 required to be filed by an entity claiming one of the exclusions set

1 forth in subparagraphs (a) and (b) of paragraph 17 of Section 141.2  
2 of this title.

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

9 SECTION 3. AMENDATORY Section 11, Chapter 150, O.S.L.  
10 2012 (15 O.S. Supp. 2017, Section 141.11), is amended to read as  
11 follows:

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

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

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

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 4. 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~~ an audited financial statement ~~in the form prescribed by~~  
11 ~~the Commissioner~~ showing all gross written provider fees or  
12 assessments received by it in connection with the issuance of  
13 service warranties in this state during the preceding calendar year  
14 and other relevant financial information as deemed necessary by the  
15 Commissioner, using statutory accounting principles which will  
16 enable the Commissioner to ascertain whether the financial  
17 requirements set forth in Section ~~141.7~~ 141.6 of this title have  
18 been satisfied.

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

23 C. In addition to an annual audited financial statement, the  
24 Commissioner may require of licensees, under oath and in ~~the~~ an

1 audited financial statement ~~form prescribed by it~~, quarterly  
2 statements or special reports which the Commissioner deems necessary  
3 for the proper supervision of licensees under the Service Warranty  
4 Act.

5 D. Provider fees and assessments received by associations and  
6 insurers for service warranties shall not be subject to the premium  
7 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,  
8 but shall be subject to an administrative fee of equal to two  
9 percent (2%) of the gross provider fee received on the sale of all  
10 service warranties issued in this state during the preceding  
11 calendar quarter. The fees shall be paid quarterly to the Insurance  
12 Commissioner. However, licensed associations, licensed insurers and  
13 entities with applications for licensure as a service warranty  
14 association pending with the Department that have contractual  
15 liability insurance in place as of March 31, 2009, from an insurer  
16 which satisfies the requirements of subsections B and C of Section  
17 ~~141.7~~ 141.6 of this title and which covers one hundred percent  
18 (100%) of the claims exposure of the association or insurer on all  
19 contracts written may elect to pay an annual administrative fee of  
20 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent  
21 administrative fee.

22 SECTION 5. AMENDATORY Section 15, Chapter 150, O.S.L.  
23 2012 (15 O.S. Supp. 2017, Section 141.15), is amended to read as  
24 follows:

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

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

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

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