

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 59th Legislature (2024)

4   HOUSE BILL 3761

By: Cantrell of the House

5   and

6   **Thompson (Kristen)** of the  
7   Senate

10                               AS INTRODUCED

11           An Act relating to contracts; amending 15 O.S. 2021,  
12           Section 141.2, as amended by Section 1, Chapter 248,  
13           O.S.L. 2022 (15 O.S. Supp. 2023, Section 141.2),  
          which relates to the Service Warranty Act; modifying  
          definitions; and providing an effective date.

16   BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17           SECTION 1.       AMENDATORY       15 O.S. 2021, Section 141.2, as  
18           amended by Section 1, Chapter 248, O.S.L. 2022 (15 O.S. Supp. 2023,  
19           Section 141.2), is amended to read as follows:

20           Section 141.2 As used in the Service Warranty Act:

21           1. "Commissioner" means the Insurance Commissioner;

22           2. "Consumer product" means tangible personal property  
23           primarily used for personal, family, or household purposes;

24           3. "Department" means the Insurance Department;

1       4. "Gross income" means the total amount of revenue received in  
2 connection with business-related activity;

3       5. "Gross written provider fee" means the total amount of  
4 consideration, inclusive of commissions, paid by a consumer for a  
5 service warranty issued in this state;

6       6. "Impaired" means having liabilities in excess of assets;

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

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

17           a.     (1)   for an association relying on subsection A of  
18                       Section 141.6 of this title, if the association's  
19                       total liabilities exceed the association's total  
20                       assets as calculated in accordance with statutory  
21                       accounting principles, or

22                   (2)   for an association relying on subsection B of  
23                       Section 141.6 of this title, if the association's  
24                       total liabilities exceed the association's total

1                   assets as calculated in accordance with generally  
2                   accepted accounting principles,

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

5           c.    the association has knowingly overvalued its assets;

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

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

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

13           b.   the removal of dents, dings or creases on a motor  
14                vehicle that can be repaired using the process of  
15                paintless dent removal without affecting the existing  
16                paint finish and without replacement vehicle body  
17                panels, sanding, bonding or painting,

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

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

- 1           e.    payment to or services provided under the terms of an  
2                ancillary protection product, or  
3           f.    other services which may be approved by the  
4                Commissioner, if not inconsistent with other  
5                provisions of this act.

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

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

- 15           a.    is installed on or applied to a motor vehicle,  
16           b.    is designed to prevent loss or damage to a motor  
17                vehicle from a specific cause, and  
18           c.    includes, within or as an accompaniment to a service  
19                warranty, a written agreement that provides that, if  
20                the ancillary protection product fails to prevent loss  
21                or damage to a motor vehicle from a specific cause,  
22                the provider will pay to or on behalf of the service  
23                warranty holder specified incidental costs as a result  
24                of the failure of the ancillary protection product to

1 perform pursuant to the terms of the ancillary  
2 protection product warranty. The reimbursement of  
3 incidental cost(s) promised under an ancillary  
4 protection product warranty must be tied to the  
5 purchase of a physical product that is formulated or  
6 designed to make the specified loss or damage from a  
7 specific cause less likely to occur.

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

16 12. "Net assets" means the amount by which the total assets of  
17 an association exceed the total liabilities of the association;

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

20 14. "Provider fee" means the total consideration received or to  
21 be received including sales commissions, by whatever name called, by  
22 a service warranty association for, or related to, the issuance and  
23 delivery of a service warranty including any charges designated as  
24 assessments or fees for membership, policy, survey, inspection, or

1 service or other charges. However, a repair charge is not a  
2 provider fee unless it exceeds the usual and customary repair fee  
3 charged by the association, provided the repair is made before the  
4 issuance and delivery of the warranty;

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

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

12 17. "Service warranty" means a contract or agreement for a  
13 separately stated consideration for a specific duration to perform  
14 the repair or replacement of property or indemnification for repair  
15 or replacement for the operational or structural failure due to a  
16 defect or failure in materials or workmanship, with or without  
17 additional provision for incidental payment of indemnity under  
18 limited circumstances including, but not limited to, failure due to  
19 normal wear and tear, towing, rental and emergency road service,  
20 road hazard, power surge, and accidental damage from handling or as  
21 otherwise provided for in the contract or agreement. The term  
22 "service warranty" includes a contract or agreement to provide one  
23 or more motor vehicle ancillary service(s) as defined by this  
24 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 policies in place, from one or more insurers  
9                   licensed in the state, which collectively cover one  
10                  hundred percent (100%) of the claims exposure on all  
11                  contracts written without being predicated on the  
12                  failure to perform under such contracts, are expressly  
13                  excluded from this 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 this state for at least  
4           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, and



1           h. home service contracts governed under Section 6750 et  
2           seq. of Title 36 of the Oklahoma Statutes are  
3           expressly 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. This act shall become effective November 1, 2024.

18  
19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
20 02/22/2024 - DO PASS, As Coauthored.