

An Act

ENROLLED SENATE
BILL NO. 1354

By: Quinn of the Senate

and

Mize of the House

An Act relating to Service Warranty Act; amending 15 O.S. 2021, Sections 141.2, 141.6, and 141.7, which relate to definitions, licensee duties, and application for license; modifying definition; allowing for service warranty contracts or agreements to include more than one insurer; conforming language; amending 36 O.S. 2021, Section 6753, which relates to home service contracts; conforming language; and providing an effective date.

SUBJECT: Service warranty contracts

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

SECTION 1. AMENDATORY 15 O.S. 2021, 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 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
- (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 in the event that the key or 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 exceed the total liabilities of the association;

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 policies in place, from ~~an insurer~~ one or more insurers licensed in the state, which ~~covers~~ collectively cover 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 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 15 O.S. 2021, Section 141.6, is amended to read as follows:

Section 141.6. A. An association licensed pursuant to the Service Warranty Act shall maintain a funded, unearned reserve account, consisting of unencumbered assets, equal to a minimum of twenty-five percent (25%) of the gross written provider fees received on all warranty contracts in force, wherever written. In the case of multiyear contracts which are offered by associations having net assets of less than Five Hundred Thousand Dollars (\$500,000.00) for which provider fees are collected in advance for coverage in a subsequent year, one hundred percent (100%) of the provider fees for such subsequent years shall be placed in the funded, unearned reserve account. Additionally, an association establishing such reserve account shall also place in trust with the Insurance Commissioner a surety bond issued by an authorized surety having a value of not less than five percent (5%) of the gross provider fee received, less claims paid, on the sale of the service warranties for all service warranties issued and in force in this state, but in no event shall the bond be less than Twenty-five Thousand Dollars (\$25,000.00).

B. An association shall not be required to establish an unearned reserve or demonstrate the minimum writing ratio required by subsection D of this section if it has purchased ~~an~~ one or more insurance policy policies ~~which demonstrates to the satisfaction of the Insurance Commissioner that collectively cover~~ one hundred percent (100%) of its claim exposure is covered by such policy and that the policy satisfies the requirements of this section. The insurance shall be obtained from ~~an insurer~~ one or more insurers that ~~is~~ are licensed, registered, or otherwise authorized to do business in this state, that is rated B++ or better by A.M. Best

Company, Inc., and that meets the requirements of subsection C of this section. For the purposes of this subsection, the insurance policy shall contain the following provisions:

1. In the event that the service warranty association is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the insurer will pay losses and unearned provider fees under such plans directly to the person making a claim under the contract;

2. The insurer issuing the insurance policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so; and

3. The policy may not be canceled or not renewed by either the insurer or the association unless sixty (60) days' written notice thereof has been given to the Commissioner by the insurer before the date of such cancellation or nonrenewal.

C. ~~The~~ Each insurer providing the insurance policy used to satisfy the financial responsibility requirements of subsection B of this section must meet one of the following standards:

1. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

- a. maintain surplus as to policyholders and paid-in capital of at least Fifteen Million Dollars (\$15,000,000.00), and
- b. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

2. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

- a. maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars (\$15,000,000.00) but at least equal to Ten Million Dollars (\$10,000,000.00),

- b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and
- c. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer.

D. No warrantor or warranty seller shall allow its gross written provider fees to exceed seven to one ratio to net assets.

E. If the gross written provider fees of a warrantor or a warranty seller exceed the required net asset ratios, the Commissioner may require, in addition to other measures as the Commissioner deems necessary, any one or more of the following:

- 1. A complete review of financial condition;
- 2. An increase in deposit;
- 3. A suspension of any new writings; or
- 4. Capital infusion into the business.

SECTION 3. AMENDATORY 15 O.S. 2021, 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~~ one or more insurance policy which satisfies policies that satisfy 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 A 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 4. AMENDATORY 36 O.S. 2021, Section 6753, is amended to read as follows:

Section 6753. A. Home service contracts shall not be issued, sold or offered for sale in this state unless the provider has:

1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and

2. Provided a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.

B. Each provider of home service contracts sold in this state shall file a registration with, and on a form prescribed by, the Insurance Commissioner consisting of their name, full corporate physical street address, telephone number, contact person and a designated person in this state for service of process. Each provider shall pay to the Commissioner a fee in the amount of One Thousand Two Hundred Dollars (\$1,200.00) upon initial registration and every three (3) years thereafter. Each provider shall pay to the Commissioner an Antifraud Assessment Fee of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) upon initial registration and every three (3) years thereafter. The registration need only be updated by written notification to the Commissioner if material changes occur in the registration on file. A proper registration is de facto a license to conduct business in Oklahoma and may be suspended as provided in Section 6755 of this title. Fees received from home service contract providers shall not be subject to any premium tax, but shall be subject to an administrative fee equal to two percent (2%) of the gross fees received on the sale of all home service contracts issued in this state during the preceding calendar quarter. The fees shall be paid quarterly to the Commissioner and submitted along with a report on a form prescribed by the Commissioner. However, service contract providers may elect to pay an annual administrative fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent administrative fee, if the provider maintains an insurance policy or policies as provided in paragraph 3 of subsection C of this section.

C. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements of paragraph 1, 2 or 3 of this subsection:

1. a. maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the Commissioner, and

- b. place in trust with the Commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than Twenty-five Thousand Dollars (\$25,000.00), consisting of one of the following:
 - (1) a surety bond issued by an authorized surety,
 - (2) securities of the type eligible for deposit by authorized insurers in this state,
 - (3) a letter of credit issued by a qualified financial institution, or
 - (4) another form of security prescribed by rule promulgated by the Commissioner;
2. a. maintain, or together with its parent company maintain, a net worth or stockholders' equity of Twenty-five Million Dollars (\$25,000,000.00), excluding goodwill, intangible assets, customer lists and affiliated receivables, and
- b. upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's financial statements, which shows a net worth of the provider or its parent company of at least Twenty-five Million Dollars (\$25,000,000.00) based upon Generally Accepted Accounting Principles (GAAP) accounting standards. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state; or

3. Purchase ~~an~~ one or more insurance ~~policy~~ policies which ~~demonstrates to the satisfaction of the Insurance Commissioner that collectively cover~~ one hundred percent (100%) of its claim exposure ~~is covered by such policy~~. The insurance shall be obtained from ~~an insurer~~ one or more insurers that ~~is~~ are licensed, registered, or otherwise authorized to do business in this state, that is rated B++ or better by A.M. Best Company, Inc., and that meets the requirements of subsection D of this section. For the purposes of this paragraph, the insurance policy or policies shall contain the following provisions:

- a. in the event that the provider is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the insurer shall pay losses and unearned premiums under such plans directly to the person making the claim under the contract,
- b. the insurer issuing the insurance policy shall assume full responsibility for the administration of claims in the event of the inability of the provider to do so, and
- c. the policy shall not be canceled or not renewed by either the insurer or the provider unless sixty (60) days' written notice thereof has been given to the Commissioner by the insurer before the date of such cancellation or nonrenewal.

D. ~~The~~ Each insurer providing ~~the~~ an insurance policy used to satisfy the financial responsibility requirements of paragraph 3 of subsection C of this section shall meet one of the following standards:

1. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:
 - a. maintain surplus as to policyholders and paid-in capital of at least Fifteen Million Dollars (\$15,000,000.00), and

- b. annually file copies of the audited financial statements of the insurer, its National Association of Insurance Commissioners (NAIC) Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

2. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

- a. maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars (\$15,000,000.00),
- b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and
- c. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer.

E. Except for the registration requirements in subsection B of this section, providers, administrators and other persons marketing, selling or offering to sell home service contracts are exempt from any licensing requirements of this state and shall not be subject to other registration information or security requirements. Home service contract providers as defined in Section 6752 of this title and properly registered under this law are exempt from any treatment pursuant to the Service Warranty Act. Home service contract providers applying for registration under the Oklahoma Home Service Contract Act that have not been registered in the preceding twelve (12) months under the Oklahoma Home Service Contract Act may be subject to a thirty-day prior review before their registration is deemed complete. Said applications shall be deemed complete after thirty (30) days unless the Commissioner takes action in that period under Section 6755 of this title, for cause shown, to suspend their registration.

F. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of home service contracts by providers and related service contract sellers, administrators, and other persons, including but not limited to real estate licensees, shall be exempt from all other provisions of the Insurance Code.

SECTION 5. This act shall become effective November 1, 2022.

Passed the Senate the 9th day of May, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 28th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____