

An Act

ENROLLED SENATE
BILL NO. 1923

By: Newberry of the Senate

and

Wood and Echols of the
House

An Act relating to the Service Warranty Act; amending Sections 1, 2, 18 and 24, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2013, Sections 141.1, 141.2, 141.18 and 141.24), which relate to short title, definitions, annual statement, sales representative and authority for civil action; modifying references; adding definitions; amending 36 O.S. 2011, Sections 6651 and 6652, as amended by Sections 34 and 35, Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013, Sections 6651 and 6652), which relate to the Vehicle Protection Product Act; modifying citation; modifying applicability; and providing an effective date.

SUBJECT: Service warranty requirements

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

SECTION 1. AMENDATORY Section 1, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2013, Section 141.1), is amended to read as follows:

Section 141.1 ~~Sections 1 through 32 of this~~ This act shall be known and may be cited as the "Service Warranty Act".

SECTION 2. AMENDATORY Section 2, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2013, 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. an association's total liabilities exceed the association's total assets 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 ~~10~~ 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 ~~14~~ 141.14 of this ~~act~~ 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;

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 contract 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 earnings of an association unless a written guaranty assures repayment and meets the conditions specified in subparagraph a of paragraph 8 of this section;

~~11.~~ 13. "Person" includes an individual, company, corporation, association, insurer, agent and any other legal entity;

~~12.~~ 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;

~~13.~~ 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;

~~14.~~ 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; however. 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 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, ~~and~~

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;

~~15.~~ 18. "Service warranty association" or "association" means any person, other than an authorized insurer, contractually obligated to a service contract 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;

~~16.~~ 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

~~17.~~ 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 3. AMENDATORY Section 18, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2013, Section 141.18), is amended to read as follows:

Section 141.18 Along with the annual statement filed pursuant to Section ~~17~~ 141.14 of this ~~act~~ title, each service warranty association or insurer shall provide the name and business address of each sales representative utilized by it in this state.

SECTION 4. AMENDATORY Section 24, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2013, Section 141.24), is amended to read as follows:

Section 141.24 A. Any person damaged by a violation of the provisions of the Service Warranty Act may bring a civil action against a person violating such provisions in the district court of the county in which the alleged violator resides or has its principal place of business or in the county in which the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or Five Hundred Dollars (\$500.00) whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

B. A service warranty and those contracts specified in subparagraphs a through e of paragraph ~~14~~ 17 of Section 141.2 of ~~Title 15 of the Oklahoma Statutes~~ this title shall not be deemed to create a special relationship between the parties which would give rise to an action in tort to recover for breach of the duty of good faith and fair dealing. This section shall not be construed to preclude a breach of contract action for failure of the parties to comply with the implied duty of good faith and fair dealing in carrying out their obligations as set forth in the service warranty.

C. This section shall not be construed to authorize a civil action against the Insurance Department, its employees, or the Insurance Commissioner.

SECTION 5. AMENDATORY 36 O.S. 2011, Section 6651, as amended by Section 34, Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013, Section 6651), is amended to read as follows:

Section 6651. As used in the Vehicle Protection Product Act:

1. "Administrator" means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties;
2. "Commissioner" means the Insurance Commissioner;
3. "Department" means the Insurance Department;

4. "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, vehicle excise taxes, vehicle registration fees, certificate of title fees, transaction fees and mechanical inspection fees;

5. "Service contract" means a contract or agreement as defined under the Service Warranty Act in ~~Sections 6601 through 6639 of this title~~ Title 15 of the Oklahoma Statutes;

6. "Vehicle protection product" means a vehicle protection device, system, or service that:

- a. is installed on or applied to a vehicle,
- b. is designed to prevent loss or damage to a vehicle from a specific cause, and
- c. includes a written warranty.

For purposes of this section, the term vehicle protection product shall include alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio and satellite tracking devices;

7. "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, that the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty;

8. "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement.

Warrantor does not include an authorized insurer providing a warranty reimbursement insurance policy;

9. "Warranty holder" means a person who purchases a vehicle protection product or who is a permitted transferee; and

10. "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties issued by the warrantor.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 6652, as amended by Section 35, Chapter 150, O.S.L. 2012 (36 O.S. Supp. 2013, Section 6652), is amended to read as follows:

Section 6652. A. No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor, and administrator, if any, comply with the provisions of the Vehicle Protection Product Act.

B. Vehicle protection product warrantors and related vehicle protection product sellers and warranty administrators complying with the Vehicle Protection Product Act are not required to comply with and are not subject to any other provisions of the Insurance Code.

C. Service contract providers who ~~do not~~ sell vehicle protection products and are licensed under the Service Warranty Act in Title 15 of the Oklahoma Statutes are not subject to the requirements of the Vehicle Protection Product Act and sales of the vehicle protection products under the Vehicle Protection Product Act are exempt from the requirements of the Service Warranty Act.

D. Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of the Vehicle Protection Product Act.

SECTION 7. This act shall become effective November 1, 2014.

Passed the Senate the 21st day of May, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2014.

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: _____