

ESB 1903

THE HOUSE OF REPRESENTATIVES
Thursday, April 01, 2010

ENGROSSED
Senate Bill No. 1903
As Amended

ENGROSSED SENATE BILL NO. 1903 - By: ALDRIDGE AND BROWN of the Senate
and SULLIVAN of the House.

[insurance - creating the Oklahoma Home Service Contract Act -
requirements of service contracts - providing penalties - codification -
effective date]

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

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 6670 of Title 36, unless there is created a duplication in numbering,
3 reads as follows:

4 This act shall be known and may be cited as the “Oklahoma Home Service Contract
5 Act”.

6 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 6671 of Title 36, unless there is created a duplication in numbering,
8 reads as follows:

9 A. The purpose of the Oklahoma Home Service Contract Act is to create an
10 independent legal framework within which home service contracts are defined, may be
11 sold and are regulated in this state. The Oklahoma Home Service Contract Act declares

1 that home service contracts, as defined in Section 3 of this act, are not insurance and not
2 otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act
3 requires simple registration, financial assurance options and enforcement by the
4 Insurance Commissioner. Proper registration under the Oklahoma Home Service
5 Contract Act exempts applicability under the Oklahoma Service Warranty Insurance
6 Act, which may regulate extended warranty, retail, automobile and agreements not
7 defined in the Oklahoma Home Service Contract Act. Nothing in the Oklahoma Service
8 Warranty Insurance Act is changed or amended by the Oklahoma Home Service Contract
9 Act.

10 B. The following items are exempt from the provisions of the Oklahoma Home
11 Service Contract Act:

- 12 1. Warranties as defined in Section 3 of this act;
- 13 2. Maintenance only agreements as defined in Section 3 of this act; and
- 14 3. Service contracts sold or offered for sale to persons other than consumers,
15 consumer product (extended warranty) service contracts on new, retail goods if made at
16 the time of sale and motor vehicle service contracts, all of which may be separately
17 regulated elsewhere in the Oklahoma Statutes.

18 C. The types of agreements covered by the Oklahoma Home Service Contract Act or
19 exempt pursuant to subsection B of this section are not insurance and do not have to
20 comply with any other provision of the Insurance Code outside of the Oklahoma Home
21 Service Contract Act.

1 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 6672 of Title 36, unless there is created a duplication in numbering,
3 reads as follows:

4 As used in the Oklahoma Home Service Contract Act:

5 1. "Administrator" means the person who is responsible for the administration of
6 home service contracts or the home service contracts plan, who may promote the contract
7 under their own private label or brand as long as the provider is clearly identified on the
8 contract, or who is responsible for any submission required by the Oklahoma Home
9 Service Contract Act;

10 2. "Commissioner" means the Insurance Commissioner;

11 3. "Consumer" means a natural person who buys other than for purposes of resale
12 any tangible personal property that is distributed in commerce and that is normally used
13 for personal, family or household purposes and not for business or research purposes;

14 4. "Maintenance agreement" means a contract of limited duration that provides for
15 scheduled maintenance only and does not include repair or replacement;

16 5. "Person" means an individual, partnership, corporation, incorporated or
17 unincorporated association, joint stock company, reciprocal, syndicate or any similar
18 entity or combination of entities acting in concert;

19 6. "Provider" means the person who is the contractually named obligor to the home
20 service contract holder under the terms of the service contract;

21 7. "Provider fee" means the consideration paid for a home service contract;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 8. “Reimbursement insurance policy” means a policy of insurance issued to a
2 provider to either provide reimbursement to the provider under the terms of the insured
3 home service contracts issued or sold by the provider or, in the event of the provider’s
4 non-performance, to pay on behalf of the provider all covered contractual obligations
5 incurred by the provider under the terms of the insured home service contracts issued or
6 sold by the provider;

7 9. “Home service contract” or “home warranty” means a contract or agreement for a
8 separately stated consideration for a specific duration to perform the service, repair,
9 replacement or maintenance of property or indemnification for service, repair,
10 replacement or maintenance, for the operational or structural failure of any residential
11 property due to a defect in materials, workmanship, inherent defect or normal wear and
12 tear, with or without additional provisions for incidental payment or indemnity under
13 limited circumstances. Home service contracts may provide for the service, repair,
14 replacement, or maintenance of property for damage resulting from power surges or
15 interruption and accidental damage from handling and may provide for leak or repair
16 coverage to house roofing systems. Home service contracts are not insurance in this
17 state or otherwise regulated under the Insurance Code;

18 10. “Service contract holder” or “contract holder” means a person who is the
19 purchaser or holder of a home service contract; and

20 11. “Warranty” means a warranty made solely by the manufacturer, importer or
21 seller of property or services, including builders on new home construction, without
22 consideration, that is not negotiated or separated from the sale of the product and is

1 incidental to the sale of the product, that guarantees indemnity for defective parts,
2 mechanical or electrical breakdown, labor or other remedial measures, such as repair or
3 replacement of the property or repetition of services.

4 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 6673 of Title 36, unless there is created a duplication in numbering,
6 reads as follows:

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

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

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

13 B. Each provider of home service contracts sold in this state shall file a registration
14 with the Insurance Commissioner consisting of their name, full corporate physical street
15 address, telephone number, contact person and a designated person in this state for
16 service of process. Each provider shall pay to the Commissioner a fee in the amount of
17 Six Hundred Dollars (\$600.00) upon initial registration and every three years thereafter.
18 The registration need only be updated by written notification to the Commissioner if
19 material changes occur in the registration on file. A proper registration is defacto a
20 license to conduct business in Oklahoma and may be suspended as provided in Section 6
21 of this act.

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

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

10 b. place in trust with the Commissioner a financial security deposit,
11 having a value of not less than five percent (5%) of the gross
12 consideration received, less claims paid, on the sale of the service
13 contract for all service contracts issued and in force, but not less than
14 Twenty-five Thousand Dollars (\$25,000.00), consisting of one of the
15 following:

- 16 (1) a surety bond issued by an authorized surety,
17 (2) securities of the type eligible for deposit by authorized insurers
18 in this state,
19 (3) cash,
20 (4) a letter of credit issued by a qualified financial institution, or
21 (5) another form of security prescribed by rule promulgated by the
22 Commissioner; or

1 2. a. Maintain, or together with its parent company maintain, a net worth or
2 stockholders' equity of Twenty-five Million Dollars (\$25,000,000.00),
3 and

4 b. upon request, provide the Commissioner with a copy of the provider's
5 or the provider's parent company's most recent Form 10-K or Form 20-
6 F filed with the Securities and Exchange Commission (SEC) within the
7 last calendar year, or if the company does not file with the SEC, a copy
8 of the company's financial statements, which shows a net worth of the
9 provider or its parent company of at least Twenty-Five Million Dollars
10 (\$25,000,000.00) based upon GAAP accounting standards. If the
11 provider's parent company's Form 10-K, Form 20-F, or financial
12 statements are filed to meet the provider's financial stability
13 requirement, then the parent company shall agree to guarantee the
14 obligations of the provider relating to service contracts sold by the
15 provider in this state; or

16 3. Insure all service contracts under a reimbursement insurance policy issued by an
17 insurer licensed, registered, or otherwise authorized to do business in this state.

18 D. Except for the registration requirements in subparagraph b of paragraph 2 of
19 subsection C of this section, providers, administrators and other persons marketing,
20 selling or offering to sell home service contracts are exempt from any licensing
21 requirements of this state and shall not be subject to other registration information or
22 security requirements. Home Service contract providers as defined in Section 3 of this

1 act and properly registered under this law are exempt from any treatment pursuant to
2 the Service Warranty Insurance Act.

3 E. The marketing, sale, offering for sale, issuance, making, proposing to make and
4 administration of home service contracts by providers and related service contract
5 sellers, administrators, and other persons shall be exempt from all other provisions of the
6 Insurance Code.

7 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 6674 of Title 36, unless there is created a duplication in numbering,
9 reads as follows:

10 A. Service contracts marketed, sold, offered for sale, issued, made, proposed to be
11 made, or administered in this state shall be written, printed, or typed in clear,
12 understandable language that is easy to read, and shall disclose the requirements set
13 forth in this section, as applicable.

14 B. Service contracts insured under a reimbursement insurance policy pursuant to
15 paragraph 3 of subsection C of Section 4 of this act shall contain a statement in
16 substantially the following form: "Obligations of the provider under this service contract
17 are insured under a service contract reimbursement insurance policy." The service
18 contract shall also state the name and address of the insurer.

19 C. Service contracts not insured under a reimbursement insurance policy pursuant
20 to paragraph 3 of subsection C of Section 4 of this act shall contain a statement in
21 substantially the following form: "Obligations of the provider under this service contract
22 are backed by the full faith and credit of the provider."

1 D. Service contracts shall state the name and address of the provider, and shall
2 identify any administrator if different from the provider, the service contract seller, and
3 the service contract holder to the extent that the name of the service contract holder has
4 been furnished by the service contract holder. The identities of such parties are not
5 required to be preprinted on the service contract and may be added to the service
6 contract at the time of sale.

7 E. Service contracts shall state the total purchase price and the terms under which
8 service contract is sold. The purchase price is not required to be pre-printed on the
9 service contract and may be negotiated at the time of sale with the service contract
10 holder.

11 F. Service contracts shall state the existence of any trade service fee, if applicable.

12 G. Service contracts shall specify the merchandise and services to be provided and
13 any limitations, exceptions, or exclusions.

14 H. Service contracts shall state any restrictions governing the transferability of the
15 service contract, if applicable.

16 I. Service contracts shall state the terms, restrictions or conditions governing
17 cancellation of the service contract.

18 J. Service contracts shall set forth all of the obligations and duties of the service
19 contract holder, such as the duty to protect against any further damage and any
20 requirement to follow the owner's manual.

21 K. Service contracts shall state whether or not the service contract provides for or
22 excludes consequential damages or pre-existing conditions, if applicable. Service

1 contracts may, but are not required to, cover damage resulting from rust, corrosion or
2 damage caused by a noncovered part or system.

3 L. If prior approval of repair work is required, a service contract shall state the
4 procedure for obtaining prior approval and for making a claim, including a toll-free
5 telephone number for claim service and a procedure for obtaining emergency repairs
6 performed outside of normal business hours.

7 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 6675 of Title 36, unless there is created a duplication in numbering,
9 reads as follows:

10 A. The Insurance Commissioner may conduct examinations of providers,
11 administrators, insurers or other persons to enforce the provisions of the Oklahoma
12 Home Service Contract Act and protect home service contract holders in this state. Upon
13 request of the Commissioner, the provider shall make all accounts, books, and records
14 concerning service contracts sold by the provider available to the Commissioner, which
15 are necessary to enable the Commissioner to reasonably determine compliance or
16 noncompliance with the Oklahoma Home Service Contract Act.

17 B. The Commissioner may take action, which is necessary or appropriate, to
18 enforce the provisions of the Oklahoma Home Service Contract Act and the orders of the
19 Commissioner and to protect service contract holders in this state.

20 1. If a provider has violated the Oklahoma Home Service Contract Act or the
21 Commissioner's rules or orders, the Commissioner may issue an order directed to that
22 provider to cease and desist from committing violations of the Oklahoma Home Service

1 Contract Act or the Commissioner's rules or orders, may issue an order prohibiting a
2 service contract provider from selling or offering for sale service contracts in violation of
3 the Oklahoma Home Service Contract Act, or may issue an order imposing a civil penalty
4 on that provider, or any combination of the foregoing, as applicable.

5 a. A person aggrieved by an order issued under this paragraph may
6 request a hearing before the Commissioner. The hearing request shall
7 be filed with the commissioner within twenty (20) days of the date the
8 Commissioner's order is effective;

9 b. if a hearing is requested, an order issued by the Commissioner under
10 this section shall be suspended from the original effective date of the
11 order until completion of the hearing and final decision of the
12 Commissioner; and

13 c. at the hearing, the burden shall be on the Commissioner to show why
14 the order issued pursuant to this paragraph is justified. The hearing
15 requested under this section shall be held in accordance with the
16 Administrative Procedures Act and the laws and rules of the Insurance
17 Department.

18 2. The Commissioner may bring an action in any court of competent jurisdiction for
19 an injunction or other appropriate relief to enjoin threatened or existing violations of the
20 Oklahoma Home Service Contract Act or of the Commissioner's orders or rules. An
21 action filed under this paragraph may also seek restitution on behalf of persons

1 aggrieved by a violation of the Oklahoma Home Service Contract Act or orders or rules of
2 the Commissioner.

3 3. A person who is found to have violated the Oklahoma Home Service Contract Act
4 or orders or rules of the Commissioner may be assessed a civil penalty in an amount
5 determined by the Commissioner of not more than Five Hundred Dollars (\$500.00) per
6 violation and no more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all
7 violations of a similar nature. For purposes of this section, violations shall be of a similar
8 nature if the violation consists of the same or similar course of conduct, action, or
9 practice, irrespective of the number of times the act, conduct, or practice which is
10 determined to be a violation of the Oklahoma Home Service Contract Act occurred.

11 SECTION 7. This act shall become effective November 1, 2010.

12 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
13 FINANCIAL SERVICES, dated 03-31-10 - DO PASS, As Amended.