

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 1012

By: Quinn of the Senate

and

Moore of the House

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9 An Act relating to insurance; amending 36 O.S. 2011,
10 Sections 6651, as last amended by Section 5, Chapter
11 418, O.S.L. 2014 (36 O.S. Supp. 2018, Section 6651),
12 and 6652, as last amended by Section 6, Chapter 418,
13 O.S.L. 2014 (36 O.S. Supp. 2018, Section 6652), which
14 relate to definitions and compliance with act;
15 modifying definitions; removing exemption from
16 Vehicle Protection Product Act for service contract
17 providers who sell vehicle protection products;
18 removing exemption from Service Warranty Act for
19 certain sales; amending Section 2, Chapter 150,
20 O.S.L. 2012, as last amended by Section 1, Chapter
21 234, O.S.L. 2018 (15 O.S. Supp. 2018, Section 141.2),
22 which relates to definitions; conforming language;
23 updating statutory language; and providing an
24 effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 6651, as
last amended by Section 5, Chapter 418, O.S.L. 2014 (36 O.S. Supp.
2018, Section 6651), is amended to read as follows:

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

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

4 2. "Commissioner" means the Insurance Commissioner;

5 3. "Department" means the Insurance Department;

6 4. "Incidental costs" means expenses specified in the warranty
7 incurred by the warranty holder related to the failure of the
8 vehicle protection product to perform as provided in the warranty.

9 Incidental costs may include insurance policy deductibles, rental
10 vehicle charges, the difference between the actual value of the
11 stolen vehicle at the time of theft and the cost of a replacement
12 vehicle, vehicle excise taxes, vehicle registration fees,
13 certificate of title fees, transaction fees and mechanical
14 inspection fees;

15 5. ~~"Service contract" means a contract or agreement as defined~~
16 ~~under the Service Warranty Act in Title 15 of the Oklahoma Statutes;~~

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

19 a. is installed on or applied to a vehicle,

20 b. is designed to prevent loss or damage to a vehicle
21 from a specific cause, and

22 c. includes a written warranty.

23 For purposes of this section, the term vehicle protection
24 product shall include protective chemical systems, alarm systems,

1 body part marking products, steering locks, window etch products,
2 pedal and ignition locks, fuel and ignition kill switches, and
3 electronic, radio and satellite tracking devices;

4 ~~7.~~ 6. "Vehicle protection product warranty" or "warranty" means
5 a written agreement by a warrantor that provides if the vehicle
6 protection product fails to prevent loss or damage to a vehicle from
7 a specific cause, that the warrantor will pay to or on behalf of the
8 warranty holder specified incidental costs as a result of the
9 failure of the vehicle protection product to perform pursuant to the
10 terms of the warranty;

11 ~~8.~~ 7. "Vehicle protection product warrantor" or "warrantor"
12 means a person who is contractually obligated to the warranty holder
13 under the terms of the vehicle protection product warranty
14 agreement. Warrantor does not include an authorized insurer
15 providing a warranty reimbursement insurance policy;

16 ~~9.~~ 8. "Warranty holder" means a person who purchases a vehicle
17 protection product or who is a permitted transferee; and

18 ~~10.~~ 9. "Warranty reimbursement insurance policy" means a policy
19 of insurance that is issued to the vehicle protection product
20 warrantor to provide reimbursement to the warrantor or to pay on
21 behalf of the warrantor all covered contractual obligations incurred
22 by the warrantor under the terms and conditions of the insured
23 vehicle protection product warranties issued by the warrantor.

24

1 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6652, as
2 last amended by Section 6, Chapter 418, O.S.L. 2014 (36 O.S. Supp.
3 2018, Section 6652), is amended to read as follows:

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

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

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

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

22 SECTION 3. AMENDATORY Section 2, Chapter 150, O.S.L.
23 2012, as last amended by Section 1, Chapter 234, O.S.L. 2018 (15
24 O.S. Supp. 2018, Section 141.2), is amended to read as follows:

1 Section 141.2. As used in the Service Warranty Act:

2 1. "Commissioner" means the Insurance Commissioner;

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

5 3. "Department" means the Insurance Department;

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

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

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

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

18 8. "Insolvent" means any actual or threatened delinquency
19 including, but not limited to, any one or more of the following
20 circumstances:

- 21 a. (1) for an association relying on subsection A of
22 Section 141.6 of this title, if the association's
23 total liabilities exceed the association's total
24

1 assets as calculated in accordance with statutory
2 accounting principles, or

3 (2) for an association relying on subsection B of
4 Section 141.6 of this title, if the association's
5 total liabilities exceed the association's total
6 assets as calculated in accordance with generally
7 accepted accounting principles,

8 b. the business of any such association is being
9 conducted fraudulently, or

10 c. the association has knowingly overvalued its assets;

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

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

15 a. repair or replacement of tires and/or wheels on a
16 motor vehicle damaged as a result of coming into
17 contact with road hazards,

18 b. the removal of dents, dings or creases on a motor
19 vehicle that can be repaired using the process of
20 paintless dent removal without affecting the existing
21 paint finish and without replacement vehicle body
22 panels, sanding, bonding or painting,

- 1 c. the repair of chips or cracks in or the replacement of
2 motor vehicle windshields as a result of damage caused
3 by road hazards,
- 4 d. the replacement of a motor vehicle key or key fob in
5 the event that the key or key fob becomes inoperable
6 or is lost or stolen, or
- 7 ~~e. payment to or services provided under the terms of an~~
8 ~~ancillary protection product, or~~
- 9 ~~f.~~ other services which may be approved by the
10 Commissioner, if not inconsistent with other
11 provisions of ~~this act~~ the Service Warranty Act.

12 A motor vehicle ancillary service does not include repair and/or
13 replacement of damage to the interior surfaces of a vehicle, or for
14 repair and/or replacement of damage to the exterior paint or finish
15 of a vehicle; ~~however, such coverage may be offered in connection~~
16 ~~with the sale of a motor vehicle ancillary protection product as~~
17 ~~defined in this section;~~

18 11. ~~"Motor vehicle ancillary protection product" or "ancillary~~
19 ~~protection product" means a protective chemical substance, device or~~
20 ~~system that:~~

- 21 a. ~~is installed on or applied to a motor vehicle,~~
- 22 b. ~~is designed to prevent loss or damage to a motor~~
23 ~~vehicle from a specific cause, and~~
- 24

1 ~~e. includes, within or as an accompaniment to a service~~
2 ~~warranty, a written agreement that provides that, if~~
3 ~~the ancillary protection product fails to prevent loss~~
4 ~~or damage to a motor vehicle from a specific cause,~~
5 ~~the provider will pay to or on behalf of the service~~
6 ~~warranty holder specified incidental costs as a result~~
7 ~~of the failure of the ancillary protection product to~~
8 ~~perform pursuant to the terms of the ancillary~~
9 ~~protection product warranty. The reimbursement of~~
10 ~~incidental cost(s) promised under an ancillary~~
11 ~~protection product warranty must be tied to the~~
12 ~~purchase of a physical product that is formulated or~~
13 ~~designed to make the specified loss or damage from a~~
14 ~~specific cause less likely to occur.~~

15 ~~For purposes of this section, the term ancillary protection~~
16 ~~product shall include, but not be limited to, protective chemicals,~~
17 ~~alarm systems, body part marking products, steering locks, window~~
18 ~~etch products, pedal and ignition locks, fuel and ignition kill~~
19 ~~switches and electronic, radio or satellite tracking devices.~~
20 ~~Ancillary protection product does not include fuel additives, oil~~
21 ~~additives or other chemical products applied to the engine,~~
22 ~~transmission, or fuel system of a motor vehicle;~~

23 ~~12. "Net assets" means the amount by which the total assets of~~
24 ~~an association exceed the total liabilities of the association;~~

1 ~~13.~~ 12. "Person" includes an individual, company, corporation,
2 association, insurer, agent and any other legal entity;

3 ~~14.~~ 13. "Provider fee" means the total consideration received
4 or to be received, including sales commissions, by whatever name
5 called, by a service warranty association for, or related to, the
6 issuance and delivery of a service warranty, including any charges
7 designated as assessments or fees for membership, policy, survey,
8 inspection, or service or other charges. However, a repair charge
9 is not a provider fee unless it exceeds the usual and customary
10 repair fee charged by the association, provided the repair is made
11 before the issuance and delivery of the warranty;

12 ~~15.~~ 14. "Road hazard" means a hazard that is encountered while
13 driving a motor vehicle and which may include, but not be limited
14 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
15 or composite scraps;

16 ~~16.~~ 15. "Sales representative" means any person utilized by an
17 insurer or service warranty association for the purpose of selling
18 or issuing service warranties;

19 ~~17.~~ 16. "Service warranty" means a contract or agreement for a
20 separately stated consideration for a specific duration to perform
21 the repair or replacement of property or indemnification for repair
22 or replacement for the operational or structural failure due to a
23 defect or failure in materials or workmanship, with or without
24 additional provision for incidental payment of indemnity under

1 limited circumstances, including, but not limited to, failure due to
2 normal wear and tear, towing, rental and emergency road service,
3 road hazard, power surge, and accidental damage from handling or as
4 otherwise provided for in the contract or agreement. The term
5 "service warranty" includes a contract or agreement to provide one
6 or more motor vehicle ancillary service(s) as defined by this
7 section. However:

8 a. maintenance service contracts under the terms of which
9 there are no provisions for such indemnification are
10 expressly excluded from this definition,

11 b. those contracts issued solely by the manufacturer,
12 distributor, importer or seller of the product, or any
13 affiliate or subsidiary of the foregoing entities,
14 whereby such entity has contractual liability
15 insurance in place, from an insurer licensed in the
16 state, which covers one hundred percent (100%) of the
17 claims exposure on all contracts written without being
18 predicated on the failure to perform under such
19 contracts, are expressly excluded from this
20 definition,

21 c. the term "service warranty" does not include service
22 contracts entered into between consumers and nonprofit
23 organizations or cooperatives the members of which
24 consist of condominium associations and condominium

1 owners, which contracts require the performance of
2 repairs and maintenance of appliances or maintenance
3 of the residential property,

4 d. the term "service warranty" does not include
5 warranties, guarantees, extended warranties, extended
6 guarantees, contract agreements or any other service
7 contracts issued by a company which performs at least
8 seventy percent (70%) of the service work itself and
9 not through subcontractors, and which has been selling
10 and honoring such contracts in this state for at least
11 twenty (20) years,

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

1 including the net assets held by the service warranty
2 associations,

3 f. service warranties are not insurance in this state or
4 otherwise regulated under the Insurance Code, and

5 g. motor service club contracts governed under Article 31
6 of Title 36 of the Oklahoma Statutes are expressly
7 excluded from this definition;

8 ~~18.~~ 17. "Service warranty association" or "association" means
9 any person, other than an authorized insurer, contractually
10 obligated to a service warranty holder under the terms of a service
11 warranty; provided, this term shall not mean any person engaged in
12 the business of erecting or otherwise constructing a new home;

13 ~~19.~~ 18. "Warrantor" means any service warranty association
14 engaged in the sale of service warranties and deriving not more than
15 fifty percent (50%) of its gross income from the sale of service
16 warranties; and

17 ~~20.~~ 19. "Warranty seller" means any service warranty
18 association engaged in the sale of service warranties and deriving
19 more than fifty percent (50%) of its gross income from the sale of
20 service warranties.

21 SECTION 4. This act shall become effective November 1, 2019.

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23 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/02/2019 - DO
24 PASS.