

1 **SENATE FLOOR VERSION**

2 February 18, 2019

3 SENATE BILL NO. 1012

By: Quinn

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5
6 An Act relating to insurance; amending 36 O.S. 2011,
7 Sections 6651, as last amended by Section 5, Chapter
8 418, O.S.L. 2014 (36 O.S. Supp. 2018, Section 6651),
9 and 6652, as last amended by Section 6, Chapter 418,
10 O.S.L. 2014 (36 O.S. Supp. 2018, Section 6652), which
11 relate to definitions and compliance with act;
12 modifying definitions; removing exemption from
13 Vehicle Protection Product Act for service contract
14 providers who sell vehicle protection products;
15 removing exemption from Service Warranty Act for
16 certain sales; amending Section 2, Chapter 150,
17 O.S.L. 2012, as last amended by Section 1, Chapter
18 234, O.S.L. 2018 (15 O.S. Supp. 2018, Section 141.2),
19 which relates to definitions; conforming language;
20 updating statutory language; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6651, as
24 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:

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

1 3. "Department" means the Insurance Department;

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

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

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

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

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

1 ~~7.~~ 6. "Vehicle protection product warranty" or "warranty" means
2 a written agreement by a warrantor that provides if the vehicle
3 protection product fails to prevent loss or damage to a vehicle from
4 a specific cause, that the warrantor will pay to or on behalf of the
5 warranty holder specified incidental costs as a result of the
6 failure of the vehicle protection product to perform pursuant to the
7 terms of the warranty;

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

13 ~~9.~~ 8. "Warranty holder" means a person who purchases a vehicle
14 protection product or who is a permitted transferee; and

15 ~~10.~~ 9. "Warranty reimbursement insurance policy" means a policy
16 of insurance that is issued to the vehicle protection product
17 warrantor to provide reimbursement to the warrantor or to pay on
18 behalf of the warrantor all covered contractual obligations incurred
19 by the warrantor under the terms and conditions of the insured
20 vehicle protection product warranties issued by the warrantor.

21 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6652, as
22 last amended by Section 6, Chapter 418, O.S.L. 2014 (36 O.S. Supp.
23 2018, Section 6652), is amended to read as follows:

24

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

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

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

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

19 SECTION 3. AMENDATORY Section 2, Chapter 150, O.S.L.
20 2012, as last amended by Section 1, Chapter 234, O.S.L. 2018 (15
21 O.S. Supp. 2018, Section 141.2), is amended to read as follows:

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

23 1. "Commissioner" means the Insurance Commissioner;

24

- 1 2. "Consumer product" means tangible personal property
2 primarily used for personal, family, or household purposes;
- 3 3. "Department" means the Insurance Department;
- 4 4. "Gross income" means the total amount of revenue received in
5 connection with business-related activity;
- 6 5. "Gross written provider fee" means the total amount of
7 consideration, inclusive of commissions, paid by a consumer for a
8 service warranty issued in this state;
- 9 6. "Impaired" means having liabilities in excess of assets;
- 10 7. "Indemnify" means to undertake repair or replacement of a
11 consumer product or a newly-constructed residential structure,
12 including any appliances, electrical, plumbing, heating, cooling or
13 air conditioning systems, in return for the payment of a segregated
14 provider fee, when the consumer product or residential structure
15 becomes defective or suffers operational failure;
- 16 8. "Insolvent" means any actual or threatened delinquency
17 including, but not limited to, any one or more of the following
18 circumstances:
- 19 a. (1) for an association relying on subsection A of
20 Section 141.6 of this title, if the association's
21 total liabilities exceed the association's total
22 assets as calculated in accordance with statutory
23 accounting principles, or
- 24

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

6 b. the business of any such association is being
7 conducted fraudulently, or

8 c. the association has knowingly overvalued its assets;

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

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

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

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

21 c. the repair of chips or cracks in or the replacement of
22 motor vehicle windshields as a result of damage caused
23 by road hazards,
24

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

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

15 11. ~~"Motor vehicle ancillary protection product" or "ancillary~~
16 ~~protection product" means a protective chemical substance, device or~~
17 ~~system that:~~

- 18 a. ~~is installed on or applied to a motor vehicle,~~
19 b. ~~is designed to prevent loss or damage to a motor~~
20 ~~vehicle from a specific cause, and~~
21 c. ~~includes, within or as an accompaniment to a service~~
22 ~~warranty, a written agreement that provides that, if~~
23 ~~the ancillary protection product fails to prevent loss~~
24 ~~or damage to a motor vehicle from a specific cause,~~

1 ~~the provider will pay to or on behalf of the service~~
2 ~~warranty holder specified incidental costs as a result~~
3 ~~of the failure of the ancillary protection product to~~
4 ~~perform pursuant to the terms of the ancillary~~
5 ~~protection product warranty. The reimbursement of~~
6 ~~incidental cost(s) promised under an ancillary~~
7 ~~protection product warranty must be tied to the~~
8 ~~purchase of a physical product that is formulated or~~
9 ~~designed to make the specified loss or damage from a~~
10 ~~specific cause less likely to occur.~~

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

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

21 ~~13.~~ 12. "Person" includes an individual, company, corporation,
22 association, insurer, agent and any other legal entity;

23 ~~14.~~ 13. "Provider fee" means the total consideration received
24 or to be received, including sales commissions, by whatever name

1 called, by a service warranty association for, or related to, the
2 issuance and delivery of a service warranty, including any charges
3 designated as assessments or fees for membership, policy, survey,
4 inspection, or service or other charges. However, a repair charge
5 is not a provider fee unless it exceeds the usual and customary
6 repair fee charged by the association, provided the repair is made
7 before the issuance and delivery of the warranty;

8 ~~15.~~ 14. "Road hazard" means a hazard that is encountered while
9 driving a motor vehicle and which may include, but not be limited
10 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
11 or composite scraps;

12 ~~16.~~ 15. "Sales representative" means any person utilized by an
13 insurer or service warranty association for the purpose of selling
14 or issuing service warranties;

15 ~~17.~~ 16. "Service warranty" means a contract or agreement for a
16 separately stated consideration for a specific duration to perform
17 the repair or replacement of property or indemnification for repair
18 or replacement for the operational or structural failure due to a
19 defect or failure in materials or workmanship, with or without
20 additional provision for incidental payment of indemnity under
21 limited circumstances, including, but not limited to, failure due to
22 normal wear and tear, towing, rental and emergency road service,
23 road hazard, power surge, and accidental damage from handling or as
24 otherwise provided for in the contract or agreement. The term

1 "service warranty" includes a contract or agreement to provide one
2 or more motor vehicle ancillary service(s) as defined by this
3 section. However:

4 a. maintenance service contracts under the terms of which
5 there are no provisions for such indemnification are
6 expressly excluded from this definition,

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

17 c. the term "service warranty" does not include service
18 contracts entered into between consumers and nonprofit
19 organizations or cooperatives the members of which
20 consist of condominium associations and condominium
21 owners, which contracts require the performance of
22 repairs and maintenance of appliances or maintenance
23 of the residential property,

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

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

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

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

6 ~~18.~~ 17. "Service warranty association" or "association" means
7 any person, other than an authorized insurer, contractually
8 obligated to a service warranty holder under the terms of a service
9 warranty; provided, this term shall not mean any person engaged in
10 the business of erecting or otherwise constructing a new home;

11 ~~19.~~ 18. "Warrantor" means any service warranty association
12 engaged in the sale of service warranties and deriving not more than
13 fifty percent (50%) of its gross income from the sale of service
14 warranties; and

15 ~~20.~~ 19. "Warranty seller" means any service warranty
16 association engaged in the sale of service warranties and deriving
17 more than fifty percent (50%) of its gross income from the sale of
18 service warranties.

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

20 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
21 February 18, 2019 - DO PASS