

# An Act

ENROLLED HOUSE  
BILL NO. 3761

By: Cantrell of the House

and

Thompson (Kristen) of the  
Senate

An Act relating to contracts; amending 15 O.S. 2021, Section 141.2, as amended by Section 1, Chapter 248, O.S.L. 2022 (15 O.S. Supp. 2023, Section 141.2), which relates to the Service Warranty Act; modifying definitions; and providing an effective date.

SUBJECT: Contracts

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

SECTION 1. AMENDATORY 15 O.S. 2021, Section 141.2, as amended by Section 1, Chapter 248, O.S.L. 2022 (15 O.S. Supp. 2023, 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~~ 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 one or more insurers licensed in the state, which 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, and
- h. home service contracts and home warranties governed under Section 6750 et seq. 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. This act shall become effective November 1, 2024.

Passed the House of Representatives the 5th day of March, 2024.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 24th day of April, 2024.

\_\_\_\_\_  
Presiding Officer of the Senate

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: \_\_\_\_\_