

1 **SENATE FLOOR VERSION**

2 April 9, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3761

By: Cantrell of the House

5 and

6 Thompson (Kristen) of the
7 Senate

8
9 An Act relating to contracts; amending 15 O.S. 2021,
10 Section 141.2, as amended by Section 1, Chapter 248,
11 O.S.L. 2022 (15 O.S. Supp. 2023, Section 141.2),
which relates to the Service Warranty Act; modifying
12 definitions; and providing an effective date.

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

15 SECTION 1. AMENDATORY 15 O.S. 2021, Section 141.2, as
16 amended by Section 1, Chapter 248, O.S.L. 2022 (15 O.S. Supp. 2023,
17 Section 141.2), is amended to read as follows:

18 Section 141.2 As used in the Service Warranty Act:

- 19 1. "Commissioner" means the Insurance Commissioner;
- 20 2. "Consumer product" means tangible personal property
21 primarily used for personal, family, or household purposes;
- 22 3. "Department" means the Insurance Department;
- 23 4. "Gross income" means the total amount of revenue received in
24 connection with business-related activity;

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

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

5 7. "Indemnify" means to undertake repair or replacement of a
6 consumer product or a ~~newly constructed~~ newly constructed
7 residential structure including any appliances, electrical,
8 plumbing, heating, cooling or air conditioning systems, in return
9 for the payment of a segregated provider fee, when the consumer
10 product or residential structure becomes defective or suffers
11 operational failure;

12 8. "Insolvent" means any actual or threatened delinquency
13 including, but not limited to, any one or more of the following
14 circumstances:

15 a. (1) for an association relying on subsection A of
16 Section 141.6 of this title, if the association's
17 total liabilities exceed the association's total
18 assets as calculated in accordance with statutory
19 accounting principles, or

20 (2) for an association relying on subsection B of
21 Section 141.6 of this title, if the association's
22 total liabilities exceed the association's total
23 assets as calculated in accordance with generally
24 accepted accounting principles,

1 b. the business of any such association is being
2 conducted fraudulently, or

3 c. the association has knowingly overvalued its assets;

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

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

8 a. repair or replacement of tires and/or wheels on a
9 motor vehicle damaged as a result of coming into
10 contact with road hazards,

11 b. the removal of dents, dings or creases on a motor
12 vehicle that can be repaired using the process of
13 paintless dent removal without affecting the existing
14 paint finish and without replacement vehicle body
15 panels, sanding, bonding or painting,

16 c. the repair of chips or cracks in or the replacement of
17 motor vehicle windshields as a result of damage caused
18 by road hazards,

19 d. the replacement of a motor vehicle key or key fob in
20 the event that the key or key fob becomes inoperable
21 or is lost or stolen,

22 e. payment to or services provided under the terms of an
23 ancillary protection product, or

1 f. other services which may be approved by the
2 Commissioner, if not inconsistent with other
3 provisions of this act.

4 A motor vehicle ancillary service does not include repair and/or
5 replacement of damage to the interior surfaces of a vehicle, or for
6 repair and/or replacement of damage to the exterior paint or finish
7 of a vehicle; however, such coverage may be offered in connection
8 with the sale of a motor vehicle ancillary protection product as
9 defined in this section;

10 11. "Motor vehicle ancillary protection product" or "ancillary
11 protection product" means a protective chemical substance, device or
12 system that:

- 13 a. is installed on or applied to a motor vehicle,
- 14 b. is designed to prevent loss or damage to a motor
15 vehicle from a specific cause, and
- 16 c. includes, within or as an accompaniment to a service
17 warranty, a written agreement that provides that, if
18 the ancillary protection product fails to prevent loss
19 or damage to a motor vehicle from a specific cause,
20 the provider will pay to or on behalf of the service
21 warranty holder specified incidental costs as a result
22 of the failure of the ancillary protection product to
23 perform pursuant to the terms of the ancillary
24 protection product warranty. The reimbursement of

1 incidental cost(s) promised under an ancillary
2 protection product warranty must be tied to the
3 purchase of a physical product that is formulated or
4 designed to make the specified loss or damage from a
5 specific cause less likely to occur.

6 For purposes of this section, the term ancillary protection
7 product shall include, but not be limited to, protective chemicals,
8 alarm systems, body-part-marking products, steering locks, window-
9 etch products, pedal and ignition locks, fuel and ignition kill
10 switches and electronic, radio or satellite tracking devices.

11 Ancillary protection product does not include fuel additives, oil
12 additives or other chemical products applied to the engine,
13 transmission, or fuel system of a motor vehicle;

14 12. "Net assets" means the amount by which the total assets of
15 an association exceed the total liabilities of the association;

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

18 14. "Provider fee" means the total consideration received or to
19 be received including sales commissions, by whatever name called, by
20 a service warranty association for, or related to, the issuance and
21 delivery of a service warranty including any charges designated as
22 assessments or fees for membership, policy, survey, inspection, or
23 service or other charges. However, a repair charge is not a
24 provider fee unless it exceeds the usual and customary repair fee

1 charged by the association, provided the repair is made before the
2 issuance and delivery of the warranty;

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

7 16. "Sales representative" means any person utilized by an
8 insurer or service warranty association for the purpose of selling
9 or issuing service warranties;

10 17. "Service warranty" means a contract or agreement for a
11 separately stated consideration for a specific duration to perform
12 the repair or replacement of property or indemnification for repair
13 or replacement for the operational or structural failure due to a
14 defect or failure in materials or workmanship, with or without
15 additional provision for incidental payment of indemnity under
16 limited circumstances including, but not limited to, failure due to
17 normal wear and tear, towing, rental and emergency road service,
18 road hazard, power surge, and accidental damage from handling or as
19 otherwise provided for in the contract or agreement. The term
20 "service warranty" includes a contract or agreement to provide one
21 or more motor vehicle ancillary service(s) as defined by this
22 section. However:

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- 1 a. maintenance service contracts under the terms of which
2 there are no provisions for such indemnification are
3 expressly excluded from this definition,
- 4 b. those contracts issued solely by the manufacturer,
5 distributor, importer or seller of the product, or any
6 affiliate or subsidiary of the foregoing entities,
7 whereby such entity has contractual liability
8 insurance policies in place, from one or more insurers
9 licensed in the state, which collectively cover one
10 hundred percent (100%) of the claims exposure on all
11 contracts written without being predicated on the
12 failure to perform under such contracts, are expressly
13 excluded from this definition,
- 14 c. the term "service warranty" does not include service
15 contracts entered into between consumers and nonprofit
16 organizations or cooperatives the members of which
17 consist of condominium associations and condominium
18 owners, which contracts require the performance of
19 repairs and maintenance of appliances or maintenance
20 of the residential property,
- 21 d. the term "service warranty" does not include
22 warranties, guarantees, extended warranties, extended
23 guarantees, contract agreements or any other service
24 contracts issued by a company which performs at least

1 seventy percent (70%) of the service work itself and
2 not through subcontractors, and which has been selling
3 and honoring such contracts in this state for at least
4 twenty (20) years,

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

20 f. service warranties are not insurance in this state or
21 otherwise regulated under the Insurance Code, ~~and~~

22 g. motor service club contracts governed under Article 31
23 of Title 36 of the Oklahoma Statutes are expressly
24 excluded from this definition, and

1 h. home service contracts and home warranties governed
2 under Section 6750 et seq. of Title 36 of the Oklahoma
3 Statutes are expressly excluded from this definition;

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

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

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

17 SECTION 2. This act shall become effective November 1, 2024.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
19 April 9, 2024 - DO PASS