

1 ENGROSSED SENATE
2 BILL NO. 823

By: Committee on Insurance of
the Senate

3 and

4 McDaniel (Randy) of the
5 House

6
7 An Act relating to service warranties; amending
8 Sections 13 and 26, Chapter 150, O.S.L. 2012 (15 O.S.
9 Supp. 2014, Sections 141.13 and 141.26), which relate
10 to the Service Warranty Act; modifying information
11 required on certain service contracts; authorizing
12 Insurance Commissioner to exempt certain requirements
13 under certain circumstances; defining additional
14 circumstances as unfair methods of competition and
15 unfair or deceptive acts or practices; defining term;
16 requiring certain claim files to be subject to
17 examination and include certain contents; providing
18 procedures for inquiry or examination by Insurance
19 Commissioner; providing penalty; providing procedures
20 for cease and desist orders; providing for certain
21 notice and hearing and judicial review; providing for
22 recovery of attorney fees; providing for
23 codification; and providing an effective date.

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

19 SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L.
20 2012 (15 O.S. Supp. 2014, Section 141.13), is amended to read as
21 follows:

22 Section 141.13. A. No service warranty form or related form
23 shall be issued or used in this state unless the form has been filed
24 with and approved by the Insurance Commissioner.

1 B. Each filing of a form shall be made not less than thirty
2 (30) days in advance of its issuance or use. At the expiration of
3 thirty (30) days from date of filing, a form so filed shall be
4 deemed approved unless prior thereto it has been affirmatively
5 disapproved by written order of the Commissioner.

6 C. Each service warranty contract shall contain a cancellation
7 provision. In the event the contract is canceled by the warranty
8 holder, return of the provider fee shall be based upon ninety
9 percent (90%) of the unearned pro rata provider fee less the actual
10 cost of any service provided under the service warranty contract.
11 In the event the contract is canceled by the association, return of
12 premium shall be based upon one hundred percent (100%) of unearned
13 pro rata provider fee less the actual cost of any service provided
14 under the service warranty contract.

15 D. Service contracts shall state the name and address of the
16 ~~provider~~ service warranty association and shall identify any
17 administrator if different from the ~~provider~~ service warranty
18 association, the service contract seller and the service contract
19 holder to the extent that the name of the service contract holder
20 has been furnished by the service contract holder. ~~The identities~~
21 ~~of the parties are not required to be preprinted on the service~~
22 ~~contract and may be added to the service contract at the time of~~
23 ~~sale~~ For service contracts issued on and after July 1, 2016, the
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1 identity of the service warranty association and its license number
2 shall be preprinted on the service contract.

3 E. The Commissioner shall disapprove any form filed pursuant to
4 this section if the form:

- 5 1. Violates the Service Warranty Act;
- 6 2. Is misleading in any respect; or
- 7 3. Is reproduced so that any material provision is
- 8 substantially illegible.

9 F. The Insurance Commissioner may, by order, exempt from the
10 requirements of this section for so long as he or she deems proper
11 any document or form or type thereof as specified in such order, to
12 which, in his or her discretion this section may not practicably be
13 applied, or the filing and approval of which are, in his or her
14 opinion, not desirable or necessary for the protection of the
15 public.

16 SECTION 2. AMENDATORY Section 26, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2014, Section 141.26), is amended to read as
18 follows:

19 Section 141.26. For purposes of the Service Warranty Act, the
20 following methods, acts, or practices are defined as unfair methods
21 of competition and unfair or deceptive acts or practices:

- 22 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE
- 23 WARRANTIES - Knowingly making, issuing, circulating, or causing to
- 24 be made, issued, or circulated, any estimate, illustration,

1 circular, statement, sales presentation, omission, or comparison
2 which:

- 3 a. misrepresents the benefits, advantages, conditions, or
4 terms of any service warranty contract,
- 5 b. is misleading or is a misrepresentation as to the
6 financial condition of any person,
- 7 c. uses any name or title of any contract misrepresenting
8 the true nature thereof, or
- 9 d. is a misrepresentation for the purpose of inducing, or
10 tending to induce, the lapse, forfeiture, exchange,
11 conversion, or surrender of any service warranty
12 contract;

13 2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly
14 making, publishing, disseminating, circulating, or placing before
15 the public, or causing, directly or indirectly, to be made,
16 published, disseminated, circulated, or placed before the public:

- 17 a. in a newspaper, magazine, or other publication,
- 18 b. in the form of a notice, circular, pamphlet, letter,
19 or poster,
- 20 c. over any radio or television station, or
- 21 d. in any other way,

22 an advertisement, announcement, or statement containing any
23 assertion, representation, or statement with respect to the business
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1 of service warranty, which assertion, representation, or statement
2 is untrue, deceptive, or misleading;

3 3. DEFAMATION - Knowingly making, publishing, disseminating, or
4 circulating, directly or indirectly, or aiding, abetting, or
5 encouraging the making, publishing, disseminating, or circulating
6 of, any oral or written statement, or any pamphlet, circular,
7 article, or literature, which is false or maliciously critical of,
8 or derogatory to, any person and which is calculated to injure such
9 person;

10 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- 11 a. filing with any supervisory or other public official,
- 12 b. making, publishing, disseminating, or circulating,
- 13 c. delivering to any person,
- 14 d. placing before the public,
- 15 e. causing, directly or indirectly, to be made,
16 published, disseminated, circulated, delivered to any
17 person, or placed before the public, any false
18 statement, or
- 19 f. making any false entry of a material fact in any book,
20 report, or statement of any person;

21 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- 22 a. attempting to settle claims on the basis of an
23 application or any other material document which was
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1 altered without notice to, or knowledge or consent of,
2 the warranty holder,

3 b. making a material misrepresentation to the warranty
4 holder for the purpose and with the intent of
5 effecting settlement of such claims, loss, or damage
6 under such contract on less favorable terms than those
7 provided in, and contemplated by, such contract, or

8 c. committing or performing with such frequency as to
9 indicate a general business practice any of the
10 following practices:

11 (1) failure properly to investigate claims,

12 (2) misrepresentation of pertinent facts or contract
13 provisions relating to coverages at issue,

14 (3) failure to acknowledge and act promptly upon
15 communications with respect to claims,

16 (4) denial of claims without conducting reasonable
17 investigations based upon available information,

18 (5) failure to affirm or deny coverage of claims upon
19 written request of the warranty holder within a
20 reasonable time after proof-of-loss statements
21 have been completed, or

22 (6) failure to promptly provide a reasonable
23 explanation to the warranty holder of the basis
24 in the contract in relation to the facts or

1 applicable law for denial of a claim or for the
2 offer of a compromise settlement;

3 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

4 Failing to maintain a record of each complaint received for a three-
5 year period after the date of the receipt of the written complaint;
6 and

7 7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to
8 issue a contract solely because of an individual's race, color,
9 creed, marital status, sex, or national origin; and

10 8. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE -

11 Failing to provide a consumer with a complete sample copy of the
12 terms and conditions of the service warranty prior to before the
13 time of sale upon a request for the same by the consumer. A service
14 warranty association may comply with the provisions of this
15 paragraph by providing the consumer with a sample copy of the terms
16 and conditions of the warranty contract or by directing the consumer
17 to a website that displays a complete sample of the terms and
18 conditions of the contract.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 141.33 of Title 15, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Claim files of service warranty associations licensed
23 pursuant to the Service Warranty Act shall be subject to examination
24 by the Insurance Commissioner or by duly appointed designees. Such

1 files shall contain all notes and work papers pertaining to a claim
2 in such detail that pertinent events and the dates of such events
3 can be reconstructed. In addition, the Commissioner and authorized
4 employees and examiners shall have access to any files of a service
5 warranty association that may relate to a particular complaint under
6 investigation or to an inquiry or examination by the Insurance
7 Department.

8 B. Every service warranty association, upon receipt of any
9 inquiry from the Commissioner, shall, within thirty (30) days from
10 the date of the inquiry, furnish the Commissioner with an adequate
11 response to the inquiry.

12 C. Every service warranty association, upon receipt of any
13 pertinent written communication including, but not limited to,
14 electronic mail or other forms of written electronic communication
15 or documentation by the service warranty association of a verbal
16 communication from a claimant which reasonably suggests that a
17 response is expected, shall, within thirty (30) days after receipt
18 thereof, furnish the claimant with an adequate response to the
19 communication.

20 D. Any violation by a service warranty association of this
21 section shall subject the service warranty association to discipline
22 including a civil penalty of not less than One Hundred Dollars
23 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00).

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 141.34 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 The Insurance Commissioner may issue a cease and desist order,
5 ex parte, if:

6 1. The Commissioner believes that:

7 a. an unauthorized service warranty association is
8 engaging in the business of service warranties in
9 violation of the Service Warranty Act, or

10 b. an unauthorized person engaged in the business of
11 service warranties acting in violation of the Service
12 Warranty Act is committing an unfair method of
13 competition or an unfair or deceptive act or practice
14 in violation of Section 141.26 of Title 15 of the
15 Oklahoma Statutes, or

16 2. It appears to the Commissioner that the alleged conduct is
17 fraudulent or hazardous or creates an immediate danger to the public
18 safety or is causing or can be reasonably expected to cause
19 significant, imminent, and irreparable public injury.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 141.35 of Title 15, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Upon issuance of an emergency cease and desist order under
24 Section 4 of this act, the Insurance Commissioner shall serve on the

1 person affected by the order, by registered or certified mail,
2 return receipt requested, to the person's last-known address, or by
3 other lawful means, an order that contains a statement of the
4 charges and require the person immediately to cease and desist from
5 the acts, methods or practices stated.

6 B. 1. If a person affected by an emergency cease and desist
7 order seeks to contest that order, the person may request a hearing
8 before the Commissioner. The person affected must request the
9 hearing not later than the thirtieth day after the date on which the
10 person receives the order. A request to contest an order must be in
11 writing and directed to the Commissioner and must state the grounds
12 for the request to set aside or modify the order.

13 2. On receiving the request for a hearing, the Commissioner
14 shall serve notice of the time and place of the hearing at which the
15 person requesting the hearing shall have the opportunity to show
16 cause why the order should not be affirmed. The hearing is to be
17 held not later than the tenth day after the date the Commissioner
18 receives the request for a hearing unless the parties mutually agree
19 to a later hearing date.

20 3. Pending the hearing, an emergency cease and desist order
21 shall continue in full force and effect unless the order is stayed
22 by the Commissioner.

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1 4. The hearing on the order shall be conducted according to the
2 procedures for contested cases under the Administrative Procedures
3 Act.

4 5. At the hearing, the Commissioner shall affirm, modify or set
5 aside in whole or in part the emergency cease and desist order.

6 C. A person aggrieved by a final order and decision of the
7 Commissioner may seek judicial review pursuant to Section 318 of
8 Title 75 of the Oklahoma Statutes.

9 D. The Commissioner may recover reasonable attorney fees if
10 judicial action is necessary for enforcement of the order.

11 E. A cease and desist order is final thirty-one (31) days after
12 the date it is received if the person affected by the order does not
13 request a hearing as provided by subsection B of this section.

14 SECTION 6. This act shall become effective November 1, 2015.

15 Passed the Senate the 11th day of March, 2015.

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Presiding Officer of the Senate

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19 Passed the House of Representatives the ____ day of _____,

20 2015.

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Presiding Officer of the House
of Representatives

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