

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 823

By: Brinkley

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7 AS INTRODUCED

8 An Act relating to service warranties; amending
9 Sections 13 and 26, Chapter 150, O.S.L. 2012 (15 O.S.
10 Supp. 2014, Sections 141.13 and 141.26), which relate
11 to the Service Warranty Act; modifying information
12 required on service contracts; defining additional
13 circumstances as unfair methods of competition and
14 unfair or deceptive acts or practices; defining term;
15 requiring certain claim files to be subject to
16 examination and include certain contents; providing
17 procedures for inquiry or examination by Insurance
18 Commissioner; providing penalty; providing procedures
19 for cease and desist orders; providing for certain
20 notice and hearing and judicial review; providing for
21 recovery of attorney fees; prohibiting certain
22 actions without license and appointment; specifying
23 certain requirements for service warranty sales
24 representatives; providing for codification; and
providing an effective date.

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

21 SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L.
22 2012 (15 O.S. Supp. 2014, Section 141.13), is amended to read as
23 follows:
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1 Section 141.13. A. No service warranty form or related form
2 shall be issued or used in this state unless the form has been filed
3 with and approved by the Insurance Commissioner.

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

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

18 D. Service contracts shall state the name and address of the
19 ~~provider~~ service warranty association and shall identify any
20 administrator if different from the ~~provider~~ service warranty
21 association, the service contract seller and the service contract
22 holder to the extent that the name of the service contract holder
23 has been furnished by the service contract holder. The ~~identities~~
24 ~~of the parties are not required to be preprinted on the service~~

1 ~~contract and may be added to the service contract at the time of~~
2 ~~sale identity of the service warranty association and its license~~
3 ~~number shall be preprinted on the service contract.~~

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

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

10 SECTION 2. AMENDATORY Section 26, Chapter 150, O.S.L.
11 2012 (15 O.S. Supp. 2014, Section 141.26), is amended to read as
12 follows:

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

16 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE
17 WARRANTIES - Knowingly making, issuing, circulating, or causing to
18 be made, issued, or circulated, any estimate, illustration,
19 circular, statement, sales presentation, omission, or comparison
20 which:

- 21 a. misrepresents the benefits, advantages, conditions, or
22 terms of any service warranty contract,
- 23 b. is misleading or is a misrepresentation as to the
24 financial condition of any person,

- 1 c. uses any name or title of any contract misrepresenting
2 the true nature thereof, or
3 d. is a misrepresentation for the purpose of inducing, or
4 tending to induce, the lapse, forfeiture, exchange,
5 conversion, or surrender of any service warranty
6 contract;

7 2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly
8 making, publishing, disseminating, circulating, or placing before
9 the public, or causing, directly or indirectly, to be made,
10 published, disseminated, circulated, or placed before the public:

- 11 a. in a newspaper, magazine, or other publication,
12 b. in the form of a notice, circular, pamphlet, letter,
13 or poster,
14 c. over any radio or television station, or
15 d. in any other way,

16 an advertisement, announcement, or statement containing any
17 assertion, representation, or statement with respect to the business
18 of service warranty, which assertion, representation, or statement
19 is untrue, deceptive, or misleading;

20 3. DEFAMATION - Knowingly making, publishing, disseminating, or
21 circulating, directly or indirectly, or aiding, abetting, or
22 encouraging the making, publishing, disseminating, or circulating
23 of, any oral or written statement, or any pamphlet, circular,
24 article, or literature, which is false or maliciously critical of,

1 or derogatory to, any person and which is calculated to injure such
2 person;

3 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

4 a. filing with any supervisory or other public official,

5 b. making, publishing, disseminating, or circulating,

6 c. delivering to any person,

7 d. placing before the public,

8 e. causing, directly or indirectly, to be made,

9 published, disseminated, circulated, delivered to any

10 person, or placed before the public, any false

11 statement, or

12 f. making any false entry of a material fact in any book,

13 report, or statement of any person;

14 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

15 a. attempting to settle claims on the basis of an

16 application or any other material document which was

17 altered without notice to, or knowledge or consent of,

18 the warranty holder,

19 b. making a material misrepresentation to the warranty

20 holder for the purpose and with the intent of

21 effecting settlement of such claims, loss, or damage

22 under such contract on less favorable terms than those

23 provided in, and contemplated by, such contract, or

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1 c. committing or performing with such frequency as to
2 indicate a general business practice any of the
3 following practices:

- 4 (1) failure properly to investigate claims,
- 5 (2) misrepresentation of pertinent facts or contract
6 provisions relating to coverages at issue,
- 7 (3) failure to acknowledge and act promptly upon
8 communications with respect to claims,
- 9 (4) denial of claims without conducting reasonable
10 investigations based upon available information,
- 11 (5) failure to affirm or deny coverage of claims upon
12 written request of the warranty holder within a
13 reasonable time after proof-of-loss statements
14 have been completed, or
- 15 (6) failure to promptly provide a reasonable
16 explanation to the warranty holder of the basis
17 in the contract in relation to the facts or
18 applicable law for denial of a claim or for the
19 offer of a compromise settlement;

20 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

21 Failing to maintain a record of each complaint received for a three-
22 year period after the date of the receipt of the written complaint;
23 and

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

4 8. FREE SERVICE WARRANTIES - Advertising, offering or providing
5 a free service warranty as an inducement to the purchase or sale of
6 real or personal property or of services directly or indirectly
7 connected with such real or personal property.

8 For the purposes of this paragraph, a "free" service warranty
9 is:

10 a. a service warranty for which no identifiable and
11 additional charge is made to the purchaser of such
12 real property, personal property or services,

13 b. a service warranty for which an identifiable or
14 additional charge is made in an amount less than the
15 cost of such service warranty as to the seller or
16 other person, other than the service warranty
17 association, providing the same, or

18 c. a service warranty with respect to which the word
19 "free" or words implying that the provision of the
20 service warranty is without cost are used in
21 connection with the advertising or offering for sale
22 of any kind of goods, merchandise or services; and

23 9. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE -
24 Failing to provide a consumer with a complete sample copy of the

1 terms and conditions of the service warranty prior to before the
2 time of sale upon a request for the same by the consumer. A service
3 warranty association may comply with the provisions of this
4 paragraph by providing the consumer with a sample copy of the terms
5 and conditions of the warranty contract or by directing the consumer
6 to a website that displays a complete sample of the terms and
7 conditions of the contract.

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

11 A. Claim files of service warranty associations licensed
12 pursuant to the Service Warranty Act shall be subject to examination
13 by the Insurance Commissioner or by duly appointed designees. Such
14 files shall contain all notes and work papers pertaining to a claim
15 in such detail that pertinent events and the dates of such events
16 can be reconstructed. In addition, the Commissioner and authorized
17 employees and examiners shall have access to any files of a service
18 warranty association that may relate to a particular complaint under
19 investigation or to an inquiry or examination by the Insurance
20 Department.

21 B. Every service warranty association, upon receipt of any
22 inquiry from the Commissioner, shall, within thirty (30) days from
23 the date of the inquiry, furnish the Commissioner with an adequate
24 response to the inquiry.

1 C. Every service warranty association, upon receipt of any
2 pertinent written communication including, but not limited to,
3 electronic mail or other forms of written electronic communication
4 or documentation by the service warranty association of a verbal
5 communication from a claimant which reasonably suggests that a
6 response is expected, shall, within thirty (30) days after receipt
7 thereof, furnish the claimant with an adequate response to the
8 communication.

9 D. Any violation by a service warranty association of this
10 section shall subject the service warranty association to discipline
11 including a civil penalty of not less than One Hundred Dollars
12 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00).

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

16 The Insurance Commissioner may issue a cease and desist order,
17 ex parte, if:

- 18 1. The Commissioner believes that:
- 19 a. an unauthorized service warranty association is
20 engaging in the business of service warranties in
21 violation of the Service Warranty Act, or
 - 22 b. an unauthorized person engaged in the business of
23 service warranties acting in violation of the Service
24 Warranty Act is committing an unfair method of

1 competition or an unfair or deceptive act or practice
2 in violation of Section 141.26 of Title 15 of the
3 Oklahoma Statutes, or

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

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

11 A. Upon issuance of an emergency cease and desist order under
12 Section 4 of this act, the Insurance Commissioner shall serve on the
13 person affected by the order, by registered or certified mail,
14 return receipt requested, to the person's last-known address, or by
15 other lawful means, an order that contains a statement of the
16 charges and require the person immediately to cease and desist from
17 the acts, methods or practices stated.

18 B. 1. If a person affected by an emergency cease and desist
19 order seeks to contest that order, the person may request a hearing
20 before the Commissioner. The person affected must request the
21 hearing not later than the thirtieth day after the date on which the
22 person receives the order. A request to contest an order must be in
23 writing and directed to the Commissioner and must state the grounds
24 for the request to set aside or modify the order.

1 2. On receiving the request for a hearing, the Commissioner
2 shall serve notice of the time and place of the hearing at which the
3 person requesting the hearing shall have the opportunity to show
4 cause why the order should not be affirmed. The hearing is to be
5 held not later than the tenth day after the date the Commissioner
6 receives the request for a hearing unless the parties mutually agree
7 to a later hearing date.

8 3. Pending the hearing, an emergency cease and desist order
9 shall continue in full force and effect unless the order is stayed
10 by the Commissioner.

11 4. The hearing on the order shall be conducted according to the
12 procedures for contested cases under the Administrative Procedures
13 Act.

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

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

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

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

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 141.36 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 No person or entity shall solicit, negotiate, advertise or
5 effectuate service warranty contracts in this state unless such
6 person or entity is licensed and appointed as a sales
7 representative. Sales representatives shall be responsible for the
8 actions of persons under their supervision. However, a service
9 warranty association licensed as such under the Service Warranty Act
10 shall not be required to be licensed and appointed as a sales
11 representative to solicit, negotiate, advertise or effectuate its
12 products.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 141.37 of Title 15, unless there
15 is created a duplication in numbering, reads as follows:

16 Sales representatives for service warranty associations shall be
17 licensed. A licensed and appointed sales representative shall be
18 directly responsible and accountable for all acts of the licensed
19 sales representative's employees or other representatives. Each
20 service warranty association shall, on forms prescribed by the
21 Insurance Department, within thirty (30) days after termination of
22 the appointment, notify the Department of such termination.

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SECTION 8. This act shall become effective November 1, 2015.

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