

# An Act

ENROLLED SENATE  
BILL NO. 780

By: Aldridge of the Senate

and

Sullivan of the House

An Act relating to insurance; creating the Oklahoma Home Service Contract Act; providing short title; stating purpose; providing exemptions; specifying certain agreements are not insurance; defining terms; requiring provider to provide certain information before the issuance of home service contracts; requiring providers to register with the Insurance Commissioner; providing for registration fee; providing for Antifraud Assessment Fee; specifying certain fee shall not be subject to premium tax; providing for administrative fee; requiring quarterly payment of certain fee; requiring submission of certain report; providing exception; authorizing the purchase of certain insurance policy; specifying policy requirements; specifying forms of financial securities; specifying that providers are not subject to the Service Warranty Insurance Act; specifying certain contract providers may be subject to certain prior review; specifying requirements of service contracts; allowing the Commissioner to conduct certain examinations; authorizing the Commissioner to take certain actions; providing procedures relating to enforcement; allowing the Commissioner to bring certain actions; specifying act shall not create a cause of action; providing penalties; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Home Service Contract Act

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6750 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Home Service Contract Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6751 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The purpose of the Oklahoma Home Service Contract Act is to create an independent legal framework within which home service contracts are defined, may be sold and are regulated in this state. The Oklahoma Home Service Contract Act declares that home service contracts, as defined in Section 3 of this act, are not insurance and not otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act requires simple registration, financial assurance options and enforcement by the Insurance Commissioner. Proper registration under the Oklahoma Home Service Contract Act exempts applicability under the Service Warranty Insurance Act, which may regulate extended warranty, retail, automobile and agreements not defined in the Oklahoma Home Service Contract Act. Nothing in the Service Warranty Insurance Act is changed or amended by the Oklahoma Home Service Contract Act.

B. The following items are exempt from the provisions of the Oklahoma Home Service Contract Act:

1. Warranties as defined in Section 3 of this act;
2. Maintenance agreements as defined in Section 3 of this act;  
and
3. Service contracts sold or offered for sale to persons other than consumers, consumer product (extended warranty) service contracts on new retail goods if made at the time of sale and motor vehicle service contracts, all of which may be separately regulated elsewhere in the Oklahoma Statutes.

C. The types of agreements covered by the Oklahoma Home Service Contract Act are not insurance and do not have to comply with any other provision of the Insurance Code outside of the Oklahoma Home Service Contract Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6752 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Home Service Contract Act:

1. "Administrator" means the person who is responsible for the administration of home service contracts or the home service contracts plan, who may promote the contract under their own private label or brand as long as the provider is clearly identified on the contract, or who is responsible for any submission required by the Oklahoma Home Service Contract Act;

2. "Commissioner" means the Insurance Commissioner;

3. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes;

4. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement;

5. "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert;

6. "Provider" means the person who is the contractually named obligor to the home service contract holder under the terms of the service contract;

7. "Provider fee" means the consideration paid for a home service contract;

8. "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured home service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured home service contracts issued or sold by the provider;

9. "Home service contract" or "home warranty" means a contract or agreement for a separately stated consideration for a specific duration to perform the service, repair, replacement or maintenance of property or indemnification for service, repair, replacement or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. Home service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide for leak or repair coverage to house roofing systems. Home service contracts are not insurance in this state or otherwise regulated under the Insurance Code;

10. "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a home service contract; and

11. "Warranty" means a warranty made solely by the manufacturer, importer or seller of property or services, including builders on new home construction, without consideration, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6753 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Home service contracts shall not be issued, sold or offered for sale in this state unless the provider has:

1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and

2. Provided a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.

B. Each provider of home service contracts sold in this state shall file a registration with, and on a form prescribed by, the Insurance Commissioner consisting of their name, full corporate physical street address, telephone number, contact person and a designated person in this state for service of process. Each provider shall pay to the Commissioner a fee in the amount of One Thousand Two Hundred Dollars (\$1,200.00) upon initial registration and every three (3) years thereafter. Each provider shall pay to the Commissioner an Antifraud Assessment Fee of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) upon initial registration and every three (3) years thereafter. The registration need only be updated by written notification to the Commissioner if material changes occur in the registration on file. A proper registration is de facto a license to conduct business in Oklahoma and may be suspended as provided in Section 6 of this act. Fees received from home service contract providers shall not be subject to any premium tax, but shall be subject to an administrative fee equal to two percent (2%) of the gross fees received on the sale of all home service contracts issued in this state during the preceding calendar quarter. The fees shall be paid quarterly to the Commissioner and submitted along with a report on a form prescribed by the Commissioner. However, service contract providers may elect to pay an annual administrative fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent administrative fee, if the provider maintains an insurance policy as provided in paragraph 3 of subsection C of this section.

C. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements of paragraph 1, 2 or 3 of this subsection:

1. a. maintain a funded reserve account for its obligations under its contracts issued and outstanding in this

state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the Commissioner, and

- b. place in trust with the Commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than Twenty-five Thousand Dollars (\$25,000.00), consisting of one of the following:
  - (1) a surety bond issued by an authorized surety,
  - (2) securities of the type eligible for deposit by authorized insurers in this state,
  - (3) cash,
  - (4) a letter of credit issued by a qualified financial institution, or
  - (5) another form of security prescribed by rule promulgated by the Commissioner;
- 2. a. maintain, or together with its parent company maintain, a net worth or stockholders' equity of Twenty-five Million Dollars (\$25,000,000.00), excluding goodwill, intangible assets, customer lists and affiliated receivables, and
- b. upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's financial statements, which shows a net worth of the provider or its parent company of at least Twenty-five Million

Dollars (\$25,000,000.00) based upon Generally Accepted Accounting Principles (GAAP) accounting standards. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state; or

3. Purchase an insurance policy which demonstrates to the satisfaction of the Insurance Commissioner that one hundred percent (100%) of its claim exposure is covered by such policy. The insurance shall be obtained from an insurer that is licensed, registered, or otherwise authorized to do business in this state, that is rated B++ or better by A.M. Best Company, Inc., and that meets the requirements of subsection D of this section. For the purposes of this paragraph, the insurance policy shall contain the following provisions:

- a. in the event that the provider is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the insurer shall pay losses and unearned premiums under such plans directly to the person making the claim under the contract,
- b. the insurer issuing the insurance policy shall assume full responsibility for the administration of claims in the event of the inability of the provider to do so, and
- c. the policy shall not be canceled or not renewed by either the insurer or the provider unless sixty (60) days' written notice thereof has been given to the Commissioner by the insurer before the date of such cancellation or nonrenewal.

D. The insurer providing the insurance policy used to satisfy the financial responsibility requirements of paragraph 3 of subsection C of this section shall meet one of the following standards:

1. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

- a. maintain surplus as to policyholders and paid-in capital of at least Fifteen Million Dollars (\$15,000,000.00), and
- b. annually file copies of the audited financial statements of the insurer, its National Association of Insurance Commissioners (NAIC) Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

2. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

- a. maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars (\$15,000,000.00),
- b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and
- c. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer.

E. Except for the registration requirements in subsection B of this section, providers, administrators and other persons marketing, selling or offering to sell home service contracts are exempt from any licensing requirements of this state and shall not be subject to other registration information or security requirements. Home service contract providers as defined in Section 3 of this act and properly registered under this law are exempt from any treatment pursuant to the Service Warranty Insurance Act. Home service contract providers applying for registration under the Oklahoma Home Service Contract Act that have not been registered in the preceding twelve (12) months under the act may be subject to a thirty-day

prior review before their registration is deemed complete. Said applications shall be deemed complete after thirty (30) days unless the Commissioner takes action in that period under Section 6 of this act, for cause shown, to suspend their registration.

F. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of home service contracts by providers and related service contract sellers, administrators, and other persons, including but not limited to real estate licensees, shall be exempt from all other provisions of the Insurance Code.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6754 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read, and shall disclose the requirements set forth in this section, as applicable.

B. Service contracts insured under an insurance policy pursuant to paragraph 3 of subsection C of Section 4 of this act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also state the name and address of the insurer.

C. Service contracts not insured under an insurance policy pursuant to paragraph 3 of subsection C of Section 4 of this act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

D. Service contracts shall state the name and address of the provider, and shall identify any administrator if different from the provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service

contract and may be added to the service contract at the time of sale.

E. Service contracts shall state the total purchase price and the terms under which service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

F. Service contracts shall state the existence of any trade service fee, if applicable.

G. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

H. Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

I. Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract.

J. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and any requirement to follow the owner's manual.

K. Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions, if applicable. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.

L. If prior approval of repair work is required, a service contract shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6755 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. After initial registration, and upon complaint or proper cause shown, providers, administrators, insurers or other persons shall be subject to periodic examination by the Insurance Commissioner, in the same manner and subject to the same terms and conditions that apply to insurers.

B. The Commissioner may take action which is necessary or appropriate to enforce the provisions of the Oklahoma Home Service Contract Act and the orders of the Commissioner and to protect service contract holders in this state.

1. If a provider has violated the Oklahoma Home Service Contract Act or the Commissioner's rules or orders, the Commissioner may issue an order directed to that provider to cease and desist from committing violations of the Oklahoma Home Service Contract Act or the Commissioner's rules or orders, may issue an order prohibiting a service contract provider from selling or offering for sale service contracts in violation of the Oklahoma Home Service Contract Act, suspend that provider's registration or may issue an order imposing a civil penalty on that provider, or any combination of the following, as applicable:

- a. a person aggrieved by an order issued under this paragraph may request a hearing before the Commissioner. The hearing request shall be filed with the Commissioner within twenty (20) days of the date the Commissioner's order is effective,
- b. if a hearing is requested, an order issued by the Commissioner under this section shall be suspended from the original effective date of the order until completion of the hearing and final decision of the Commissioner, and
- c. at the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this paragraph is justified. The hearing requested under this section shall be held in accordance with the Administrative Procedures Act and the laws and rules of the Insurance Department.

2. The Commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of the Oklahoma Home Service Contract Act or of the Commissioner's orders or rules. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of the Oklahoma Home Service Contract Act or orders or rules of the Commissioner.

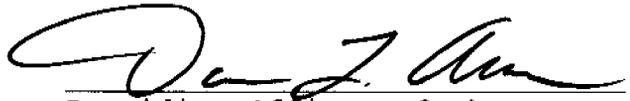
3. A person who is found to have violated the Oklahoma Home Service Contract Act or orders or rules of the Commissioner may be assessed a civil penalty in an amount determined by the Commissioner of not more than Five Hundred Dollars (\$500.00) per violation and no more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of the Oklahoma Home Service Contract Act occurred. This act is administrative only and nothing in this act shall be construed to create a private cause of action hereunder.

SECTION 7. This act shall become effective November 1, 2011.

Passed the Senate the 4th day of May, 2011.

  
Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2011.

  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 5<sup>th</sup>  
day of May, 20 11,  
at 1:45 o'clock P.M.

By: Jessie D. Byars

Approved by the Governor of the State of Oklahoma the 11<sup>th</sup> day of  
May, 20 11, at 3:21 o'clock P.M.

Mary Fallin  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this \_\_\_\_\_  
11<sup>th</sup> day of May, 20 11,  
at 4:50 o'clock P M.

By: Duchelle R. Day