

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1430

By: Leewright and Lockhart of
the House

4 and

5 Griffin of the Senate

6
7
8 An Act relating to consumer protection; amending 15
9 O.S. 2011, Section 775B.2, which relates to the
10 Telemarketer Restriction Act; modifying definitions;
11 and providing an effective date.

12 AUTHOR: Remove the following Senate Coauthor: Griffin and
13 substitute with Senator Brinkley

14 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

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

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

2 SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L.
3 2012 (15 O.S. Supp. 2014, Section 141.13), is amended to read as
4 follows:

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

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

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

22 D. Service contracts shall state the name and address of the
23 ~~provider~~ service warranty association and shall identify any
24 administrator if different from the ~~provider~~ service warranty

1 association, the service contract seller and the service contract
2 holder to the extent that the name of the service contract holder
3 has been furnished by the service contract holder. ~~The identities~~
4 ~~of the parties are not required to be preprinted on the service~~
5 ~~contract and may be added to the service contract at the time of~~
6 ~~sale~~ For service contracts issued on and after July 1, 2016, the
7 identity of the service warranty association and its license number
8 shall be preprinted on the service contract.

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

- 11 1. Violates the Service Warranty Act;
- 12 2. Is misleading in any respect; or
- 13 3. Is reproduced so that any material provision is
14 substantially illegible.

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

22 SECTION 2. AMENDATORY Section 26, Chapter 150, O.S.L.
23 2012 (15 O.S. Supp. 2014, Section 141.26), is amended to read as
24 follows:

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

4 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE
5 WARRANTIES - Knowingly making, issuing, circulating, or causing to
6 be made, issued, or circulated, any estimate, illustration,
7 circular, statement, sales presentation, omission, or comparison
8 which:

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

19 2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly
20 making, publishing, disseminating, circulating, or placing before
21 the public, or causing, directly or indirectly, to be made,
22 published, disseminated, circulated, or placed before the public:

- 23 a. in a newspaper, magazine, or other publication,

24

- b. in the form of a notice, circular, pamphlet, letter,
or poster,
- c. over any radio or television station, or
- d. in any other way,

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

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

4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- a. filing with any supervisory or other public official,
- b. making, publishing, disseminating, or circulating,
- c. delivering to any person,
- d. placing before the public,
- e. causing, directly or indirectly, to be made,
published, disseminated, circulated, delivered to any
person, or placed before the public, any false
statement, or

1 f. making any false entry of a material fact in any book,
2 report, or statement of any person;

3 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

4 a. attempting to settle claims on the basis of an
5 application or any other material document which was
6 altered without notice to, or knowledge or consent of,
7 the warranty holder,

8 b. making a material misrepresentation to the warranty
9 holder for the purpose and with the intent of
10 effecting settlement of such claims, loss, or damage
11 under such contract on less favorable terms than those
12 provided in, and contemplated by, such contract, or

13 c. committing or performing with such frequency as to
14 indicate a general business practice any of the
15 following practices:

16 (1) failure properly to investigate claims,

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

19 (3) failure to acknowledge and act promptly upon
20 communications with respect to claims,

21 (4) denial of claims without conducting reasonable
22 investigations based upon available information,

23 (5) failure to affirm or deny coverage of claims upon
24 written request of the warranty holder within a

1 reasonable time after proof-of-loss statements
2 have been completed, or

3 (6) failure to promptly provide a reasonable
4 explanation to the warranty holder of the basis
5 in the contract in relation to the facts or
6 applicable law for denial of a claim or for the
7 offer of a compromise settlement;

8 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

9 Failing to maintain a record of each complaint received for a three-
10 year period after the date of the receipt of the written complaint;

11 and

12 7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to

13 issue a contract solely because of an individual's race, color,
14 creed, marital status, sex, or national origin; and

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

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

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

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

14 B. Every service warranty association, upon receipt of any
15 inquiry from the Commissioner, shall, within thirty (30) days from
16 the date of the inquiry, furnish the Commissioner with an adequate
17 response to the inquiry.

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

3 D. Any violation by a service warranty association of this
4 section shall subject the service warranty association to discipline
5 including a civil penalty of not less than One Hundred Dollars
6 (\$100.00) nor more than Five Thousand Dollars (\$5,000.00).

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

10 The Insurance Commissioner may issue a cease and desist order,
11 ex parte, if:

12 1. The Commissioner believes that:

13 a. an unauthorized service warranty association is
14 engaging in the business of service warranties in
15 violation of the Service Warranty Act, or

16 b. an unauthorized person engaged in the business of
17 service warranties acting in violation of the Service
18 Warranty Act is committing an unfair method of
19 competition or an unfair or deceptive act or practice
20 in violation of Section 141.26 of Title 15 of the
21 Oklahoma Statutes, or

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

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

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

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

20 2. On receiving the request for a hearing, the Commissioner
21 shall serve notice of the time and place of the hearing at which the
22 person requesting the hearing shall have the opportunity to show
23 cause why the order should not be affirmed. The hearing is to be
24 held not later than the tenth day after the date the Commissioner

1 receives the request for a hearing unless the parties mutually agree
2 to a later hearing date.

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

6 4. The hearing on the order shall be conducted according to the
7 procedures for contested cases under the Administrative Procedures
8 Act.

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

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

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

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

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9 O.S. 2011, Section 775B.2, which relates to the
10 Telemarketer Restriction Act; modifying definitions;
11 and providing an effective date.

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 7. AMENDATORY 15 O.S. 2011, Section 775B.2, is
15 amended to read as follows:

16 Section 775B.2 As used in the Telemarketer Restriction Act:

17 1. "Commercial purposes" means relating to the sale or offer
18 for sale of goods or services. "Commercial purposes" does not mean
19 solicitation of funds or other support for a charitable or religious
20 activity; political candidate, cause, or organization; or any
21 activity of a not-for-profit entity organized pursuant to Section
22 501(c)(3) of the Internal Revenue Code;

23 2. "Consumer" means any natural person who is a resident of
24 this state and ~~shall not include~~ any business association,

1 partnership, firm, corporation, and its affiliates or subsidiaries,
2 or other business entity located in this state;

3 3. "Established business relationship" means a prior
4 relationship formed within the preceding twenty-four (24) months or
5 an existing relationship formed by a voluntary two-way communication
6 between a person or entity and a consumer or residential subscriber
7 with or without an exchange of consideration, on the basis of an
8 inquiry, application, purchase or transaction by the consumer or
9 residential subscriber regarding products or services offered by
10 such person or entity, which relationship has not been previously
11 terminated by either party;

12 4. "Person" means any natural person, association, partnership,
13 firm, corporation and its affiliates or subsidiaries, or other
14 business entity;

15 5. "Telemarketer" means any person who, for commercial
16 purposes, initiates a telemarketing sales call or message,
17 including, but not limited to, a cellular telephone text message,
18 to a consumer located in this state or any person who directly
19 controls or supervises the conduct of a telemarketer; and

20 6. "Telemarketing" means any plan, program, or campaign which
21 is conducted for commercial purposes, by use of one or more
22 telephones or electronic messaging devices and which involves a
23 telephone call or message, including, but not limited to, a cellular
24 telephone text message, initiated by a telemarketer to a consumer

1 | located within this state at the time of the call or message;
2 | "telemarketing" may include use of random dialing or other devices
3 | for such purposes and use of recorded or simulated voices or
4 | automated electronic text messages delivery devices. "Telemarketing"
5 | does not include a telephone call which is made for the sole purpose
6 | of arranging a subsequent face-to-face meeting between a salesperson
7 | and the consumer.

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

9 | Passed the House of Representatives the 18th day of February,
10 | 2015.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2015.

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Presiding Officer of the Senate

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