

An Act

ENROLLED SENATE
BILL NO. 102

By: Newberry and Marlatt of the
Senate

and

McDaniel of the House

An Act relating to consumer protection; amending Section 13, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2016, Section 141.13), which relates to service warranties; prohibiting automatic renewal provision in rental contracts; providing exception; construing provision; amending 59 O.S. 2011, Section 1955, as amended by Section 3, Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016, Section 1955), which relates to the Oklahoma Rental-Purchase Act; modifying jurisdiction and venue for review; providing for codification; and providing an effective date.

SUBJECT: Consumer protection

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

SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2016, Section 141.13), as last amended by Section 5 of Enrolled Senate Bill No. 427 of the 1st Session of the 56th Oklahoma Legislature, is amended to read as follows:

Section 141.13. A. No service warranty form or related form shall be issued or used in this state unless the form has been filed with the Insurance Commissioner. Service warranty forms shall not be subject to prior approval and shall be filed with the Insurance Commissioner for informational purposes only.

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

C. Service warranties shall state the name and address of the service warranty association and shall identify any administrator if different from the service warranty association, the service warranty seller and the service warranty holder to the extent that the name of the service warranty holder has been furnished by the service warranty holder. For service warranties issued on and after July 1, 2017, the identity of the service warranty association and its license number shall be preprinted on the service warranty or added at the time of sale so consumers can clearly identify the obligor of the service warranty. Information to be printed at the time of sale shall be indicated as such at the time the service warranty is filed ~~for approval~~ and a "Jane Doe" specimen shall accompany the service warranty illustrating how the service warranty will look after printing.

D. The Commissioner shall have the authority to immediately order a service warranty association to stop using any service warranty contract if the Commissioner determines that the form:

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

E. The Insurance Commissioner may, by order, exempt from the requirements of this section for so long as he or she deems proper any document or form or type thereof as specified in such order, to which, in his or her discretion this section may not practicably be applied, or the filing of which is, in his or her opinion, not desirable or necessary for the protection of the public.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 222 of Title 15, unless there is created a duplication in numbering, reads as follows:

No contract for the rental of goods or rental-related services where all or substantially all of the contract terms are drafted by the provider of such goods or services shall contain any automatic renewal provision that extends the initial term of the contract for any period longer than six (6) months, unless the contract provides the nondrafting party with the ability to terminate at any time during the renewal period without penalty by providing notice of not more than sixty (60) days. Nothing in this section shall be construed to prohibit the parties to the contract from entering into a new contract at the end of the initial term of the contract or at any time after an extension of the contract as provided by this section.

SECTION 3. AMENDATORY 59 O.S. 2011, Section 1955, as amended by Section 3, Chapter 278, O.S.L. 2016 (59 O.S. Supp. 2016, Section 1955), is amended to read as follows:

Section 1955. A. A consumer damaged by a violation of the Oklahoma Rental-Purchase Act by a lessor is entitled to recover from the lessor:

1. Actual damages;

2. Twenty-five percent (25%) of an amount equal to the total amount of payments required to obtain ownership of the merchandise involved, except that the amount recovered under this section shall not be less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or in the case of a class action, an amount the court may allow, except that as to each member of the class no minimum recovery may be applicable and the total recovery other than for actual damages in any class action or series of class actions arising out of the same failure to comply by the same lessor shall not be more than the lesser of Five Hundred Thousand Dollars (\$500,000.00) or one percent (1%) of the net worth of the lessor; and

3. Reasonable attorney fees and court costs.

B. In addition to the enforcement powers provided in Section 6-102 of Title 14A of the Oklahoma Statutes, the Administrator of Consumer Credit or a duly authorized representative of the Administrator may investigate the books, accounts, papers, correspondence and records of any lessor licensed under the Oklahoma Rental-Purchase Act. For the purposes of this section, any person who advertises for, solicits or holds himself or herself out as willing to make rental-purchase transactions, shall be presumed to be a rental-purchase lessor. Each lessor shall pay to the Administrator an examination fee as prescribed by rule of the Commission on Consumer Credit. The Administrator may require payment of an examination fee either at the time of initial application, renewal of the license, or after an examination has been conducted.

C. The Administrator may promulgate rules and regulations necessary for the enforcement of the Oklahoma Rental-Purchase Act and consistent with all its provisions.

D. The Administrator shall appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of the Oklahoma Rental-Purchase Act. The independent hearing examiner shall have authority to exercise all powers granted by Article II of the Administrative Procedures Act in conducting hearings. The independent hearing examiner shall have authority to recommend penalties authorized by the Oklahoma Rental-Purchase Act and issue proposed orders, with proposed findings of fact and proposed conclusions of law, to the Administrator pursuant to Article II of the Administrative Procedures Act. The Administrator shall review the proposed order and issue a final agency order in accordance with Article II of the Administrative Procedures Act. Any person aggrieved by a final agency order of the Administrator may obtain judicial review in accordance with the Administrative Procedures Act. The jurisdiction and venue of any such action shall be in the district court of Oklahoma County or the county of the aggrieved. Hearing costs may be assessed against the respondent, unless the respondent is the prevailing party.

E. After notice and hearing, the Administrator may decline to renew a license, or suspend or revoke any license issued pursuant to the Oklahoma Rental-Purchase Act for violating any provision of the

Oklahoma Rental-Purchase Act or any rules promulgated by the Administrator, or in lieu of or in addition to such denial, suspension or revocation, order the refund of any unlawful or excessive fees, enter a cease and desist order or impose an administrative fine in an amount not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) for each violation of the Oklahoma Rental-Purchase Act, not to exceed Five Thousand Dollars (\$5,000.00) for all violations of a lessor.

F. Except as otherwise expressly provided in the Oklahoma Rental-Purchase Act, the Administrative Procedures Act, Sections 250.3 through 323 of Title 75 of the Oklahoma Statutes, applies to and governs all administrative actions and civil proceedings taken by the Administrator pursuant to the Oklahoma Rental-Purchase Act.

G. Where there are multiple lessees to a rental-purchase agreement, there shall be no more than one recovery under the Oklahoma Rental-Purchase Act for a violation.

H. A lessor is not liable under the Oklahoma Rental-Purchase Act for a violation thereof caused by the lessor's error if before the sixtieth day after the date the lessor discovers the error, and before an action under this section is filed or written notice of the error is received by the lessor from the lessee, the lessor gives the lessee written notice of the error and makes adjustments in the lessee's account as necessary to ensure that the lessee will not be required to pay an amount in excess of the amount disclosed and that the agreement otherwise complies with this subsection. Nor may a lessor be held liable in any action brought under the Oklahoma Rental-Purchase Act for a violation of the Oklahoma Rental-Purchase Act if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. A bona fide error includes, but is not limited to, a clerical, calculation, computer malfunction in programming, and printing error, but not an error of legal judgment with respect to a lessor's disclosure obligations under the Oklahoma Rental-Purchase Act.

I. Any entity or individual offering to engage or engaged as a rental-purchase lessor in this state without a license shall be

subject to an administrative fine not to exceed Five Thousand Dollars (\$5,000.00).

J. The Administrator may impose an administrative fine as prescribed in subsection I of this section, after notice and hearing in accordance with Article II of the Administrative Procedures Act. Any administrative order or settlement agreement may be enforced in the same manner as civil judgments in this state. The Administrator may file an application to enforce an administrative order or settlement agreement in the district court of Oklahoma County or the county of the aggrieved.

SECTION 4. This act shall become effective November 1, 2017.

Passed the Senate the 4th day of May, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____