

Enrolled
Senate Bill 577

Sponsored by Senator THOMSEN

CHAPTER

AN ACT

Relating to methods for protecting property; creating new provisions; and amending ORS 646A.152, 646A.154 and 646A.430.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646A.152 is amended to read:

646A.152. As used in ORS 646A.150 to 646A.172:

(1) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(2)(a) "Obligor" means [*the person who*] **a person that** is contractually obligated to the service contract holder to provide service under a service contract. [*and who:*]

[*(a) Sold the merchandise covered by the service contract;*]

[*(b) Sells merchandise similar to that covered by the service contract; or*]

[*(c) Is acting through or with the written consent of the manufacturer, importer or seller of the merchandise covered by the service contract.*]

(b) "Obligor" does not include a person that has a home services contractor license, as described in section 5a, chapter 300, Oregon Laws 2013 (Enrolled Senate Bill 207), and offers or provides services under a home service agreement, as defined in ORS 731.164.

(3) "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.

(4) "Service contract" is a contract described in ORS 646A.154.

(5) "Service contract holder" or "contract holder" means a person [*who is the purchaser or holder of*] **that purchases or holds** a service contract.

(6) "Service contract seller" means a person [*who*] **that** markets, sells or offers to sell a service contract.

(7) "Warranty" means a warranty [*made solely by the manufacturer, importer or seller of*] **that a person that manufactures, imports or sells** property or services[,] **makes** without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, and 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 2. ORS 646A.154 is amended to read:

646A.154. (1)(a) For the purposes of this section, a service contract is a contract or agreement to perform or indemnify for a specific duration the repair, replacement or maintenance of property for operational or structural failure [*due to*] **that results from** a defect in materials, workmanship

or normal wear and tear, with or without **an additional incidental** provision [*for incidental payment of*] **to pay** indemnity under limited circumstances, including but not limited to rental and emergency road service. A service contract may also provide for:

(A) [*the repair, replacement or maintenance of*] **Repairing, replacing or maintaining** property for damage [*resulting*] **that results** from lightning, power surges or accidental damage from handling[.];

(B) **Repairing or replacing tires or wheels on a motor vehicle damaged as a result of contacting a road hazard;**

(C) **Removing dents, dings, creases or other damage on a motor vehicle that a process of paintless dent removal can repair without affecting an existing paint finish or replacing vehicle body panels, sanding, bonding or repainting;**

(D) **Repairing chips or cracks in motor vehicle windshields or replacing motor vehicle windshields because of damage that results from road hazards;**

(E) **Replacing motor vehicle keys or key fobs that become inoperable or that are lost or stolen;**

(F) **Paying specified incidental costs that result from the failure of a vehicle protection product, as defined in ORS 646A.430, to perform according to the specifications for the vehicle protection product; and**

(G) **Other services the Director of the Department of Consumer and Business Services specifies by rule, to the extent that the services are similar to services described in this paragraph.**

(b) **For the purposes of this section, a service contract does not include coverage for repairing damage to or replacing components of a motor vehicle's interior or exterior paint or finish unless the service contract provides the services described in this paragraph in connection with the sale of a vehicle protection product, as defined in ORS 646A.430.**

(c) Consideration for a service contract must be stated separately from the price of the consumer product.

(d) **For purposes of this section, a service contract** [*The term "service contract"*] does not include insurance policies [*issued by*] **that insurers issue** under the Insurance Code[,], or maintenance agreements.

(2) An obligor may not issue, sell or offer for sale a service contract in this state unless the obligor has complied with the provisions of this section and ORS 646A.156 and 646A.158.

(3) All obligors of service contracts issued, sold or covering property located in this state shall file a registration with the [*Director of the*] Department of Consumer and Business Services on a form, at a fee and at a frequency [*prescribed by*] **that the director** [*pursuant to*] **specifies under** ORS 646A.168.

(4) An obligor shall keep accurate accounts, books and records concerning transactions [*involving*] **that involve** service contracts.

(5) Except as provided in subsection (6) of this section, to ensure the faithful performance of an obligor's obligations to [*its*] **the obligor's** contract holders, each obligor shall provide the director with one of the following as proof of financial stability:

(a) A copy of the obligor's [*or, if the obligor's financial statements are consolidated with those of its parent company, the obligor's parent company's*] most recent Form 10-K **that the obligor or the obligor's parent company, if the obligor consolidates financial statements with a parent company, filed with the Securities and Exchange Commission. A Form 10-K that the obligor or the obligor's parent company filed within the last calendar year must show that the obligor or the obligor's parent company has** [*which shows*] a net worth of [*the obligor or its parent company of*] at least \$100 million [*provided the Form 10-K was filed with the Securities and Exchange Commission within the last calendar year*]. If the obligor's parent [*company's*] **company files the** Form 10-K [*is filed*] to meet the obligor's financial stability requirement, [*then*] the parent company shall agree to guarantee the obligations [*of the obligor relating to*] **the obligor has in** service contracts [*sold by the obligor*] **the obligor sells** in this state.

(b) Evidence of a reimbursement insurance policy described in ORS 742.390 that *[is obtained by]* **an authorized insurer issues to** the obligor and *[issued by an authorized insurer]* that insures all service contracts *[issued by]* the obligor **sells**.

(6)(a) An obligor of a home service agreement as defined in ORS 731.164 shall file with the director a surety bond executed to the State of Oregon in the sum of \$25,000. The surety bond *[shall]* **must** be issued by a surety company authorized to do business in this state. An obligor of a home service agreement *[is not required]* **does not need** to file proof of financial stability under subsection (5) of this section.

(b) The surety bond **described in paragraph (a) of this subsection must** *[shall]* be issued on the condition that the obligor comply with all provisions of ORS 646A.150 to 646A.172 and fully perform on all contracts or agreements *[entered]* into **which the obligor enters**.

(c) The surety bond *[shall]* **must** be continuous until canceled and *[shall]* **must** remain in full force and unimpaired at all times to comply with this section. The surety shall give the director at least 30 days' written notice by registered or certified mail before the surety cancels or terminates *[its]* **the surety's** liability under the bond.

(d) Any person who suffers damage as a result of a violation of any provision of ORS 646A.150 to 646A.172 or any rule *[adopted by]* the director **adopts** pursuant to ORS 646A.150 to 646A.172 *[shall have]* **has** a right of action under the bond. *[An action under the bond may be brought by]* The state or *[by any]* **a** person with a right of action **may bring an action under the bond** by filing a complaint in a court of competent jurisdiction not later than one year after the surety bond is canceled or terminated. The court may award the prevailing plaintiff reasonable attorney fees and costs in an action under the bond.

(e) The aggregate liability of the surety *[shall]* **may** not exceed the principal sum of the bond.

(7) Filing requirements are as follows:

(a) The obligor shall file with the director proof of financial stability or a surety bond as required by subsection (5) or (6) of this section.

(b) The director **by rule** may *[adopt rules concerning]* **specify** the procedure for filing the proof of financial stability or the surety bond.

(c) A person may not file or cause to be filed with the director any article, certificate, report, statement, application or any other information required or permitted to be filed under this subsection that the person knows *[to be]* **is** false or misleading in any material respect.

(8) Service contract sellers and *[their employees marketing, selling or offering]* **employees of service contract sellers that market, sell or offer** to sell service contracts for obligors who comply with this section and ORS 646A.156 and 646A.158 are exempt from the requirements of the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(9) Obligors *[complying]* **that comply** with ORS 646A.156 and 646A.158 *[are not required]* **do not need** to comply with the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(10) If a service contract seller is not the same person as the obligor under the service contract, the service contract seller shall remit the agreed-upon consumer purchase price of the service contract to the obligor within 30 days *[of the sale of such]* **after selling the** service contract or *[upon such]* **in accordance with** terms and conditions *[as may be agreed to in writing between]* **to which** the service contract seller and obligor **agree in writing**.

SECTION 3. ORS 646A.430 is amended to read:

646A.430. As used in ORS 646A.430 to 646A.450:

(1) "Consumer" means a person in this state who purchases a vehicle protection product or who possesses a vehicle protection product and is entitled to enforce a warranty for the product by reason of the person's possession.

(2) "Reimbursement insurance policy" means an insurance policy issued to a warrantor that:

(a) Reimburses the warrantor for expenses or other obligations the warrantor incurs in complying with the terms and conditions in a vehicle protection product warranty; or

(b) Pays on a warrantor's behalf all obligations due under the terms and conditions of the warrantor's vehicle protection product warranty.

(3) "Reimbursement insurer" means an insurer that issues a reimbursement insurance policy.

(4) "Seller" means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

[(5) "Vehicle protection product" means a product, system or service that is designed to prevent a particular type of loss or damage to a vehicle from theft, and that is:]

[(a) Provided as a product or system that is installed on or applied to a vehicle or provided as a service for a specific vehicle; and]

[(b) Accompanied by a written warranty.]

(5)(a) "Vehicle protection product" means:

(A) A protective chemical, substance, device, product or system that is:

(i) Designed to prevent loss or damage to a vehicle from a specific cause; and

(ii) Accompanied by a written warranty that provides that if the vehicle protection product fails to prevent a specified loss or damage, the warrantor will reimburse a consumer for specified related and incidental costs the consumer incurs as a result of the vehicle protection product's failure to perform in accordance with the terms of the vehicle protection product warranty, if the consumer purchases a physical product that is designed or formulated to make the specified related and incidental costs less likely to occur;

(B) An alarm system;

(C) A product to mark motor vehicle body parts;

(D) A lock for a motor vehicle steering wheel, pedal or ignition;

(E) A product to etch motor vehicle windows;

(F) A kill switch for motor vehicle ignitions or fuel systems;

(G) A tracking system that uses satellites, radio or electronic means; or

(H) Other similar or related chemicals, substances, devices, products, systems or services that are designed to prevent loss or damage to a motor vehicle from a specific cause.

(b) "Vehicle protection product" does not include:

(A) A fuel or oil additive; or

(B) Other chemical products that are applied to a motor vehicle's engine, transmission or fuel system.

(6)(a) "Warrantor" means a person [named under the terms of] that a vehicle protection product warranty names as the contractual obligor to the consumer.

(b) "Warrantor" does not include an authorized insurer that provides a warranty reimbursement insurance policy.

SECTION 4. The amendments to ORS 646A.152, 646A.154 and 646A.430 by sections 1 to 3 of this 2013 Act apply to service contracts into which a consumer enters and vehicle protection product warranties that go into effect on or after the effective date of this 2013 Act.

Passed by Senate April 22, 2013

Repassed by Senate June 18, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2013

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Tina Kotek, Speaker of House

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State