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3 STATE OF OREGON  
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of:

Case No. INS-20-0003

7 TRUNORTH WARRANTY PLANS OF  
8 NORTH AMERICA, LLC, a North Carolina  
9 Limited Liability Company,

FINAL ORDER TO CEASE AND  
DESIST AND FINAL ORDER  
ASSESSING CIVIL PENALTIES,

Respondent.

10 **HISTORY OF THE CASE**

11 On April 22, 2020, the Department of Consumer & Business Services, Division of  
12 Financial Regulation, (Department) issued TruNorth Warranty Plans of North America,  
13 LLC, (TruNorth) an Order to Cease and Desist, Proposed Order to Assess Civil Penalties,  
14 and Notice of Right to an Administrative Hearing (Order and Notice). On May 11, 2020,  
15 TruNorth requested a hearing.

16 On May 18, 2020, the Department referred the matter to the Office of  
17 Administrative Hearings (OAH). The OAH assigned Administrative Law Judge (ALJ)  
18 Samantha A. Fair to preside at hearing. On July 13, 2020, ALJ Fair convened a prehearing  
19 conference. Attorney Laura Caldera appeared on TruNorth's behalf. Senior Assistant  
20 Attorney General Tyler Anderson appeared on the Department's behalf. Anthony Estrada  
21 also appeared on behalf of the Department. ALJ Fair scheduled the hearing for April 20  
22 and 21, 2021, and set deadlines for the submission of motions, witness lists and exhibits.

23 On November 30, 2020, the parties submitted a Stipulated Motion to Extend  
24 Deadlines that also included a request to reschedule the hearing. On December 1, 2020,  
25 ALJ Fair granted the motion and rescheduled the hearing for June 21 and 22, 2021, and  
26 reset deadlines for the submission of motions, witness lists and exhibits.

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387





1 On April 6, 2021, TruNorth submitted an Unopposed Motion to Extend Deadlines  
2 that also included a request to reschedule the hearing. On April 8, 2021, ALJ Fair granted  
3 the motion and rescheduled the hearing for September 14 and 15, 2021, and reset deadlines  
4 for the submission of motions, witness lists and exhibits.

5 On July 12, 2021, TruNorth filed a Motion for Summary Determination. On  
6 August 2, 2021, the Department filed a Response to the Motion for Summary  
7 Determination. On August 12, 2021, ALJ Fair issued a Ruling on the Motion for Summary  
8 Determination, denying the motion.

9 On August 20, 2021, the parties filed a Stipulated Motion to Extend Deadline. On  
10 August 23, 2021, ALJ Fair granted the motion and reset the deadline to submit witness lists  
11 and exhibits. On September 7, 2021, the parties filed a Stipulated Motion to Extend  
12 Deadline. On September 8, 2021, ALJ Fair granted the motion and reset the deadline to  
13 submit witness lists and exhibits. On September 9, 2021, the parties filed a List of  
14 Stipulated Facts, their witness lists, declarations and exhibits, and TruNorth's Trial Brief.  
15 On September 13, 2021, TruNorth filed an additional declaration.

16 ALJ Fair convened a video conference hearing on September 14, 2021. TruNorth  
17 was represented by Ms. Caldera. The Department was represented by Assistant Attorney  
18 General Jacob Gill. Mr. Estrada also appeared for the Department. Neither party called  
19 any witnesses. Both parties presented oral closing arguments. The record closed at the  
20 conclusion of the hearing.

21 On September 14, 2021, after the hearing, TruNorth filed a Supplemental Trial  
22 Brief. On September 15, 2021, ALJ Fair reopened the record and accepted the  
23 Supplemental Trial Brief, provided the Department time to present any additional  
24 supportive citations, and provided the Department an opportunity to present any objections  
25 to TruNorth's declarations. On September 15, 2021, the Department filed objections to the  
26 declarations. On September 16, 2021, the Department filed an additional legal citation,

1 ALJ Fair granted TruNorth an opportunity to respond to the Department’s objections, and  
2 TruNorth filed its responses to the Department’s objections. On September 17, 2021, ALJ  
3 Fair closed the record.

4 On October 5, 2021, ALJ Fair issued a Proposed Order (Proposed Order)  
5 concluding that TruNorth violated certain provisions of ORS 646A.154 and ORS  
6 646A.156, proposing the assessment of civil penalties in the total amount of \$14,000  
7 against TruNorth for violations of certain provisions of ORS 646A.154 and ORS  
8 646A.156, and proposing that TruNorth be ordered to cease and desist from violating ORS  
9 646A.154(2), (3), and (5) and ORS 646A.156(2) and (6). TruNorth timely filed exceptions  
10 (Exceptions) to the Proposed Order on November 4, 2021.

11 Having considered the Proposed Order and the Exceptions, the Department adopts  
12 the Proposed Order as the Final Order in this case.

13 **ISSUES**

14 1. Whether the TruNorth Agreements are service contracts as defined in ORS  
15 646A.154(1)(a).

16 2. Whether TruNorth failed to file a registration with the Department when serving  
17 as an obligor on a service contract. ORS 646A.154(3).

18 3. Whether TruNorth failed to file proof of financial stability with the Department  
19 when serving as an obligor on a service contract. ORS 646A.154(5).

20 4. Whether TruNorth failed to identify itself as the obligor on a service contract.  
21 ORS 646A.156(2).

22 5. Whether TruNorth failed to state any terms, restrictions or conditions governing  
23 the transferability of a service contract. ORS 646A.156(6).

24 6. Whether TruNorth failed to comply with ORS 646A.154 and ORS 646A.156.  
25 ORS 646A.154(2).

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Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 7. Whether the Department may assess TruNorth civil penalties for any  
2 established violations of ORS 646A.154 and ORS 646A.156. ORS 646A.162(6).

3 8. Whether the Department may issue TruNorth a cease and desist order. ORS  
4 646A.162(5).

5 **EVIDENTIARY RULINGS**

6 The Department originally submitted Exhibits A1 through A5, and TruNorth  
7 submitted Exhibits R1 through R11. During the hearing, the Department withdrew Exhibit  
8 A5 from the record, and TruNorth withdrew Exhibit R1 from the record.

9 The List of Stipulated Facts and Exhibits J1 through J4 were admitted into the  
10 record without objection.

11 The Department's Exhibits A2 through A4 were admitted into the record without  
12 objection.

13 TruNorth's Exhibit R6 was admitted into the record without objection.

14 ALJ Fair overruled TruNorth's hearsay objection to the Department's Exhibit A1  
15 and admitted it into the record.

16 ALJ Fair overruled the Department's relevancy objections and admitted TruNorth's  
17 Exhibits R2 through R3 and R7 through R11. The Department originally objected to  
18 TruNorth's Exhibits R4 and R5 for being incomplete in the absence of the audio recordings.  
19 TruNorth agreed to provide the audio recordings, but the Department subsequently  
20 withdrew its request for the audio recordings. ALJ Fair admitted Exhibits R4 and R5 into  
21 the record.

22 ALJ Fair also overruled the Department's relevancy and foundation objections to  
23 TruNorth's Declaration of William Kirk Eskridge, Supplemental Declaration of William  
24 Kirk Eskridge, and Declaration of Laura Caldera and admitted them into the record.

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1 **FINDINGS OF FACT**

2 1. TruNorth is a North Carolina limited liability company headquartered in  
3 Huntersville, North Carolina. TruNorth does not have any offices or employees in Oregon.  
4 (Stip. Facts at 1.)

5 2. TruNorth sells agreements titled All-Inclusive Component Breakdown Limited  
6 Warranty Agreement (TruNorth Agreements). (Stip. Facts at 1.)

7 3. The TruNorth Agreements include sections for the customer, retailer and lien  
8 holder to provide identifying information that includes their names, full addresses and  
9 telephone numbers. The TruNorth Agreements include a section for the identification of  
10 the Class 3 to 8 motor vehicles<sup>1</sup> that are the subjects of the TruNorth Agreements. The  
11 TruNorth Agreements provide coverage terms of 12 to 48 months for these vehicles. (Ex.  
12 J1 at 1.) TruNorth is the obligor of the TruNorth Agreements and is only identified in the  
13 agreements as “TruNorth” and not by their complete name. (Stip. Facts at 2; Ex. J1.)

14 4. The TruNorth Agreements require TruNorth to perform, or indemnify the  
15 holder of such agreement for, the repair or replacement of certain specified covered  
16 component parts of the subject motor vehicles<sup>2</sup> in the event of operational or structural  
17 failure resulting from a defect in materials, workmanship, or normal wear and tear. (Stip.  
18 Facts at 2.) The TruNorth Agreements provide, in part:

19 Breakdown means the failure of any original or replacement part  
20 covered by this Agreement as it was originally designed to work  
21 in normal service with proper maintenance as recommended by the  
22 manufacturer and mandated by this Warranty. A component will  
be deemed failed or worn out when wear exceeds manufacturer’s  
tolerable limits. TruNorth will pay for parts and labor necessary  
to repair or replace the approved covered parts. These charges

23 <sup>1</sup> Class 3 to 7 motor vehicles have gross vehicle weight ratings in excess of 10,000 pounds, such as buses,  
24 dump trucks or moving trucks, and Class 8 motor vehicles have gross vehicle weight ratings in excess of  
33,000 pounds, colloquially called “big-rigs.” (Eskridge Dec. at 2.)

25 <sup>2</sup> For example, the internally lubricated parts of an engine, such as bearings, camshaft, connecting rods, and  
26 related components, such as exhaust manifold and vibration dampener are covered by the TruNorth  
Agreement but the engine block and cylinder heads are covered by the agreement only if damaged by a  
covered component. (Ex. J1 at 2.)

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1 shall not exceed the manufacturer's suggested retail price for parts.  
2 Labor allowances are derived from the nationally recognized labor  
3 time schedules. Replacement parts will be the same quality as the  
4 covered parts and may include new, remanufactured, or used parts  
5 at TruNorth's discretion.

6 (Ex. J1 at 3.)

7 5. With respect to transferability, the TruNorth Agreements state the following:

8 This Agreement may be transferable to another person or company  
9 ONLY with an approved inspection and paid fee to TruNorth, the  
10 Authorized Administrator. For transfer questions, contact  
11 Customer Service at 800-903-7489.

12 (Ex. J1 at 2; Stip. Facts at 3.)

13 6. During the period from April 2016 to August 2, 2019, TruNorth issued, sold  
14 and offered for sale at least 302 TruNorth Agreements to individuals or entities who listed  
15 an Oregon address in the customer identification section of the agreements. These  
16 TruNorth Agreements covered certain specified component parts of commercial motor  
17 vehicles (CMVs), of which 97.5 percent of the CMVs were Class 8 vehicles. TruNorth  
18 received financial consideration in connection with the issuance and sale of each of these  
19 302 TruNorth Agreements. (Stip. Facts at 2; Ex. J4 at 1-2; Eskridge Dec. at 2.)

20 7. When TruNorth Agreements were sold to Oregon residents, they were sold  
21 through dealers, including dealers located in Oregon, authorized by TruNorth to sell its  
22 warranties. (Stip. Facts at 1; Eskridge Dec. at 5-6.)

23 8. In June 2017, CCW Transportation Services LLC (CCW), an interstate for-hire  
24 trucking company headquartered in Grants Pass, Oregon, paid \$6,200<sup>3</sup> for a TruNorth  
25 Agreement (CCW Agreement) through a dealer located in Portland, Oregon. The CCW  
26 Agreement covered a 2014 Volvo 780 (Volvo), a Class 8 CMV, for a 36-month period.  
(Exs. J2 at 1; A1 at 2; R6 at 6, 9.) The CCW Agreement was issued, sold, and offered for

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<sup>3</sup> TruNorth did not necessarily receive \$6,200 as compensation for the sale of the CCW Agreement. The dealer received \$6,200 and then paid TruNorth an unknown wholesale price from the proceeds for the sale of the agreement. (Ex. A1 at 2; Eskridge Dec. at 6.)





1 sale to CCW in Oregon. The Volvo was periodically located in Oregon during the term of  
2 the CCW Agreement. (Stip. Facts at 2; Ex. J2 at 1.) In the appropriate sections of the  
3 CCW Agreement, the customer was identified as CCW Transportation Services LLC with  
4 its full address, email and telephone number. The retailer was identified as TEC Equipment  
5 Inc. with its full address and telephone number. The lien holder was identified as Green  
6 Truck Financial LLC with its full address and telephone number. The CCW Agreement  
7 did not include any identifying section for the obligor and never referenced TruNorth by  
8 its full name. The CCW Agreement included an email address, fax number and a claims  
9 hot line number for TruNorth. (Ex. J2 at 1-4.)

10 9. From May 2018 through July 2019, CCW submitted five claims to TruNorth  
11 for repairs performed on the Volvo in the following states: Idaho, Texas, Indiana, Utah and  
12 Oregon. (Eskridge Supp. Dec. at 2; Exs. R7 – R11.)

13 10. TruNorth has never filed any registration for any purpose with the Department.  
14 (Stip. Facts at 3.)

15 11. During the period from April 2016 to August 2, 2021, TruNorth did not have  
16 any reimbursement insurance that insured TruNorth's obligations under any TruNorth  
17 Agreements that were issued and sold in Oregon. (Stip. Facts at 3; Ex. J4 at 2.)

18 12. TruNorth has never provided the Department with evidence of any  
19 reimbursement insurance policy insuring TruNorth's obligations under the TruNorth  
20 Agreements or any other proof of TruNorth's financial stability. (Stip. Facts at 3.)

## 21 CONCLUSIONS OF LAW

22 1. The TruNorth Agreements are service contracts as defined in ORS  
23 646A.154(1)(a).

24 2. TruNorth failed to file a registration with the Department when serving as an  
25 obligor on a service contract.

26 ///

1 3. TruNorth failed to file proof of financial stability with the Department when  
2 serving as an obligor on a service contract.

3 4. TruNorth failed to identify itself as the obligor on a service contract.

4 5. TruNorth failed to state any terms, restrictions or conditions governing the  
5 transferability of a service contract.

6 6. TruNorth failed to comply with ORS 646A.154 and ORS 646A.156.

7 7. The Department may assess TruNorth civil penalties for its violations of ORS  
8 646A.154 and ORS 646A.156.

9 8. The Department may issue TruNorth a cease and desist order.

### 10 **OPINION**

11 The Department proposes to assess TruNorth civil penalties in the total amount of  
12 \$14,000 and to issue TruNorth a cease and desist order, based on allegations that it failed  
13 to comply with Oregon requirements for service contracts. As the proponent of the  
14 allegations, the Department has the burden to establish, by a preponderance of the  
15 evidence, that the allegations are correct and that it is entitled to impose the penalties and  
16 issue the order. ORS 183.450(2) (“The burden of presenting evidence to support a fact or  
17 position in a contested case rests on the proponent of the fact or position”); *Reguero v.*  
18 *Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on  
19 Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213  
20 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence).  
21 Proof by a preponderance of the evidence means that the fact finder is persuaded that the  
22 facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*,  
23 303 Or 390, 402 (1987).

### 24 Oregon Service Contract Laws

25 In its Order and Notice, the Department alleges that TruNorth issued and sold 302  
26 service contracts to Oregon purchasers of CMVs in violation of provisions of ORS





1 646A.154 and ORS 646A.156. ORS 646A.154 and ORS 646A.156 are part of a statutory  
2 scheme contained in ORS 646A.150 through ORS 646A.172 (Service Contract Laws) that  
3 apply to service contracts issued or sold in Oregon.

4 ORS 646A.150 provides:

5 (1) ORS 646A.150 to 646A.172:

6 (a) Create a legal framework within which service contracts may  
be sold in this state;

7 (b) Encourage innovation in the marketing and development of  
8 more economical and effective means of providing services under  
service contracts, while placing the risk of innovation on the  
9 obligors rather than on consumers; and

10 (c) Permit and encourage fair and effective competition among  
different systems of providing and paying for service contracts.

11 (2) ORS 646A.150 to 646A.172 do not apply to:

12 (a) Warranties; or

13 (b) Maintenance agreements.

14 ORS 646A.152 provides, in part:

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

16 (2)(a) "Obligor" means a person that is contractually obligated to  
the service contract holder to provide service under a service  
contract.

17 \* \* \* \* \*

18 (3) "Person" means an individual, partnership, corporation,  
incorporated or unincorporated association, joint stock company,  
19 reciprocal, syndicate or any similar entity or combination of  
entities acting in concert.

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

21 (5) "Service contract holder" or "contract holder" means a person  
that purchases or holds a service contract.

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

23 (7) "Warranty" means a warranty that a person that manufactures,  
24 imports or sells property or services makes without charge, that is  
not negotiated or separated from the sale of the product and is  
25 incidental to the sale of the product, and that guarantees indemnity  
for defective parts, mechanical or electrical breakdown, labor or  
26 other remedial measures, such as repair or replacement of the  
property or repetition of services.





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ORS 646A.154 provides, in part:

(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 that results from a defect in materials, workmanship or normal wear and tear, with or without an additional incidental provision to pay indemnity under limited circumstances, including but not limited to rental and emergency road service. \* \* \*

\* \* \* \* \*

(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 does not include insurance policies 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 Department of Consumer and Business Services on a form, at a fee and at a frequency that the director specifies under ORS 646A.168.

\* \* \* \* \*

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

\* \* \* \* \*

(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 after selling the service contract or in accordance with terms and conditions to which the service contract seller and obligor agree in writing.

ORS 646A.156 provides, in part:

A service contract issued, sold or offered for sale in this state shall meet the following requirements:

(1) The service contract shall be written in clear, understandable language.

(2) The service contract shall identify the obligor and the service contract seller.

\* \* \* \* \*

1 (5) The service contract shall specify the merchandise covered,  
2 services to be provided and any limitations, exceptions or  
3 exclusions.

4 (6) The service contract shall state any terms, restrictions or  
5 conditions governing the transferability of the service contract by  
6 the service contract holder[.]

7 TruNorth argues that the legislature’s use of the word “consumer” (consumers,  
8 consumer product, consumer purchase price) means that the Service Contract Laws are  
9 consumer protection statutes and apply only to transactions involving goods intended for  
10 personal, family and household uses. Because it was undisputed that the subjects of the  
11 TruNorth Agreements were commercial motor vehicles, the TruNorth Agreements did not  
12 involve products intended for personal, family or household use. Therefore, TruNorth  
13 asserts that its agreements are not subject to the Service Contract Laws and TruNorth does  
14 not have to abide by its requirements. The Department argues that the Service Contract  
15 Laws contain no such limitation and apply to personal and commercial transactions.

16 The parties’ dispute (whether the Service Contract Laws apply to commercial use  
17 products) presents a question of statutory construction. When interpreting a statute, the  
18 goal is to ascertain the legislature’s intent. *PGE v. Bureau of Labor Industries*, 317 Or  
19 606, 610 (1993). “We ascertain the legislature’s intentions by examining the text of the  
20 statute in its context, along with any relevant legislative history, and, if necessary, canons  
21 of construction.” *State v. Cloutier*, 351 Or 68, 75 (2011); *122nd Grp., LLC v. Dep’t of*  
22 *Consumer*, 280 Or App 209 (2016).

23 In the Service Contract Laws contained in ORS chapter 646A, the legislature failed  
24 to include a definition of the term “consumer” for the three occasions it references the term:  
25 consumers (ORS 646A.150(1)(b)), consumer product (ORS 646A.154(1)(c)) and  
26 consumer purchase price (ORS 646A.154(1)). Therefore, the initial step in statutory  
construction is to determine the meaning of the text, in this case the word “consumer.” In  
statutory construction, words are given their plain, natural and ordinary meaning. *See State*

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Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
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1 v. *Gaines*, 346 Or 160, 175 (2009) (using dictionary definitions to discern the plain, natural,  
2 and ordinary meaning of terms). The relevant plain meaning of “consumer” is “one that  
3 utilizes economic goods.” *Webster’s Third New Int’l Dictionary* 490 (unabridged ed  
4 1993). This definition would encompass one who utilizes goods for personal, family and  
5 household purposes and one who utilizes goods for business or commercial purposes.

6 TruNorth utilizes definitions for “consumer” contained in *Black’s Law Dictionary*,  
7 specifically the sixth and eleventh editions, for its argument. However, the definitions  
8 provided by *Black’s* are not conclusive. In the sixth edition, *Black’s* begins with an initial  
9 definition similar to *Webster’s* in which a consumer is “one who consumes. \* \* \*. Users  
10 of the final product. \* \* \*. Consumers are to be distinguished from manufacturers (who  
11 produce goods), and wholesalers or retailers (who sell goods).” *Black’s Law Dictionary*  
12 316 (6<sup>th</sup> ed 1990). Such a definition would be applicable to CCW as the user of the final  
13 product, the Volvo, in its shipping business. *Black’s* then provides another definition in  
14 which a consumer is “a buyer (other than for purposes of resale) of any consumer product.”  
15 *Id.* However, in providing this second definition, *Black’s* cites to 15 U.S.C.A. § 2301, a  
16 federal statute that contains the exact same verbiage and includes the definition of a  
17 “consumer product” as “personal property \* \* \* normally used for personal, family, or  
18 household purposes.” 15 USC § 2301(1) and (3). Therefore, *Black’s* 6<sup>th</sup> edition provides  
19 both the broader generic definition for consumer and the narrower definition for consumer  
20 as defined by 15 USC § 2301(3).

21 Although *Black’s* 11<sup>th</sup> edition begins with the narrow definition for consumer as  
22 “someone who buys goods or services for personal, family, or household use,” it provides  
23 a lengthy explanation that notes that consumer “has various legal meanings. It can be used  
24 broadly, to mean citizens who ‘consume’ or use goods or services \* \* \*. Usually it is used  
25 in a more restrictive way \* \* \* normally means a private individual acquiring goods or  
26 services.” *Black’s Law Dictionary* (11<sup>th</sup> ed 2019). Although *Black’s* provides the narrower

1 definition for “consumer” as the user of products for personal, family and household uses,  
2 *Black’s* also provides, as does *Webster’s*, the broader definition for “consumer” as the  
3 purchaser of a product that the purchaser intends to use rather than re-sell. Thus, *Black’s*  
4 definitions do not persuasively establish that the legislature’s use of “consumer” in the  
5 Service Contract Laws was intended to restrict the statutory scheme to consumers of  
6 personal, family and household products. Instead, *Black’s* acknowledgement that  
7 “consumer” has various meanings supports a conclusion that a legislature that intends to  
8 provide a narrower definition for the term would include such an explicit definition.

9 TruNorth argues that the Service Contract Laws’ use of the word “consumer,”  
10 although not defined within the Service Contract Laws, is defined elsewhere in ORS  
11 chapter 646A as an individual who uses the subject property “primarily for personal, family  
12 or household purposes.” TruNorth argues that “consumer” taken in the context of the entire  
13 ORS chapter 646A demonstrates the legislature’s intent that “consumer” includes  
14 transactions primarily for personal, family or household purposes. Thus, TruNorth  
15 concludes that ORS 646A.154 and ORS 646A.156 do not apply to service contracts for  
16 CMVs.

17 TruNorth correctly identifies that definitions for “consumer” limited to goods for  
18 personal, family and household uses appear in ORS chapter 646A, specifically: (1) ORS  
19 646A.120(3) (rental and lease agreements); (2) ORS 646A.293(3) (governing automatic  
20 renewal charges on debit and credit cards); and (3) ORS 646A.400(2) (lemon law for new  
21 motor vehicles). It also appears in the definition of “consumer goods” in ORS  
22 646A.093(1)(b) (shipment of consumer goods directly to Oregon consumer). However,  
23 other portions of ORS chapter 646A also provide definitions for “consumer” that do not  
24 include the limitation to goods used for “personal, family or household purposes.” In ORS  
25 646A.430(1), a “consumer” is a person who purchases a vehicle protection product; in ORS  
26 646A.460, a “consumer” is a purchaser of an assistive device if purchased for purposes

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Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387





1 other than resale; and, in ORS 646A.602(2) (identify theft protection), a “consumer” is an  
2 individual resident of this state. These varied definitions of the word “consumer”  
3 demonstrate that the legislature did not intend the word “consumer” to always have the  
4 same meaning wherever it may appear in ORS chapter 646A.

5       ORS 174.010 contains a general rule for construction of statutes and provides that  
6 a judge is “not to insert what has been omitted, or to omit what has been inserted.” If the  
7 legislature had intended to incorporate the “consumer” definition that is limited to property  
8 that involves personal, family or household purposes into the Service Contract Laws, it  
9 could have done so as it did in the other sections of ORS chapter 646A. However, the  
10 legislature did not do so. Therefore, the presumption is that the legislature’s failure to do  
11 so was purposeful and that the legislature did not intend to limit the protections contained  
12 in the Service Contract Laws to those transactions that involve personal, family or  
13 household purposes. *See Jordan v. SAIF*, 343 Or 208, 218 (2007).

14       In context with the other provisions of the Service Contract Laws (rather than the  
15 entire ORS chapter 646A), “consumer” would not have a restricted definition. The  
16 “consumer” is the service contract holder, which is defined as “a person that purchases or  
17 holds a service contract.” ORS 646A.152(5). ORS 646A.152(3) defines a “person” as “an  
18 individual, partnership, corporation, incorporated or unincorporated association, joint stock  
19 company, reciprocal, syndicate or any similar entity or combination of entities acting in  
20 concert.” Because a “person” includes all forms of business entities, a “service contract  
21 holder” (*i.e.*, the consumer) can be either an individual or a business. Thus, the specific  
22 definitions provided in the Service Contract Laws do not demonstrate a legislative intent  
23 to restrict service contracts to transactions involving personal, family or household goods.

24       TruNorth also argued that the Service Contract Laws are analogous to Oregon’s  
25 Unlawful Trade Practices Act (UTPA) contained in ORS 646.605 to 646.656 and cites to  
26 Oregon cases that find that the claim must involve goods for personal, family or household

1 uses. Although TruNorth correctly points out that the UTPA does not define “consumer,”  
2 it does define “real estate, goods or services” (the subject of unlawful trade practices) to  
3 mean “those that are or may be obtained primarily for personal, family or household  
4 purposes.” ORS 646.605(6)(a). Thus, the UTPA specifically provides limitations for its  
5 coverage in its definitions, unlike the Service Contract Laws.

6 As described in *Gaines*, 346 Or at 171-72, the framework for statutory  
7 interpretation requires the examination of the text, context, and any pertinent legislative  
8 history to discern the legislature’s intended meaning. Importantly, “[t]he formal  
9 requirements of lawmaking produce the best source from which to discern the legislature’s  
10 intent, for it is not the intent of the individual legislators that governs, but the intent of the  
11 legislature as formally enacted into law[.]” *Id.* at 171. However, “there is no more  
12 persuasive evidence of the intent of the legislature than the words by which the legislature  
13 undertook to give expression to its wishes.” *Gaines*, 346 Or at 171 (internal quotation  
14 marks omitted); *see also White v. Jubitz Corp.*, 347 Or 212, 223 (2009) (observing that  
15 “legislative history cannot substitute for, or contradict the text” of a statute).

16 TruNorth provided legislative history for House Bill (HB) 3278 (1995), which  
17 created the original statutory scheme for the Service Contract Laws in ORS chapter 646A.<sup>4</sup>  
18 Although there were occasional mentions of the word “consumer” in the history, there was  
19 nothing in the history that supports a conclusion that the legislature intended for the Service  
20 Contract Laws to only cover goods for personal, family and household uses.<sup>5</sup> The  
21 legislative history included no discussion of a definition for “consumer.” Instead, the  
22 legislative committee discussed such things as the difference between maintenance  
23 contracts and service contracts, the fiscal impact of the bill, fiscal stability requirements,

24 <sup>4</sup> Prior to 1995, first party service contracts (the obligor and the service contract seller are the same person)  
25 were not subject to any regulatory scheme and third party service contracts (the obligor and the service  
contract seller are not the same person) were regulated under Oregon insurance laws. (Ex. 2 at 13-14.)

26 <sup>5</sup> During the legislative sessions, Assistant Attorney General Peter Shepherd frequently used the word  
“consumer” but he also never provided a definition for the term. Exhibit R4.



1 prohibited acts, and the concern that service contracts were, at that time, unregulated  
2 contracts. Exhibit R4 at 4-5, 15 n 5, 16 n 8.

3 The legislative committee discussed the definition of a service contract and  
4 expressed concerns about a proposed definition being too broad such that it would include  
5 vandalism. Exhibit R4 at 8. In an earlier version of the definition, a service contract was  
6 “an agreement to perform the repair, replacement or maintenance of a specified consumer  
7 product.” Exhibit R4 at 15 (emphasis in original.) Yet, the legislature currently defines a  
8 service contract to include “the repair, replacement or maintenance of *property* for  
9 operational or structural failure that results from a defect in materials, workmanship or  
10 normal wear and tear.” ORS 646A.154(1)(a) (emphasis added.) In this definition, the  
11 legislature changed the description of the subject of the service contract from a “consumer  
12 product” to “property.” These legislative deliberations and changes do not support a  
13 conclusion that the legislature intended to restrict the application of the Service Contract  
14 Laws only to property for personal, family or household purposes.

15 TruNorth notes that the legislative committee received testimony from Julie  
16 Brandis, in which she used examples of a television and a stereo, and argues that such  
17 examples support its contention that the legislature intended the Service Contract Laws to  
18 only apply to personal, family or household goods. Ms. Brandis, an industry spokesperson,  
19 used the sales of a television, stereo and a Walkman to explain the difference between first  
20 party and third party service contracts. Exhibit R4 at 13-14. The fact that an industry  
21 spokesperson chose these three products, out of presumably thousands of products, as her  
22 examples is not persuasive evidence that the legislature intended the Service Contract Laws  
23 to only apply to personal, family or household goods. Similarly, the legislative  
24 committee’s discussion of allowing service contracts to include negligent damage caused  
25 by an external source, in which the committee used a single example of damage to a boom  
26 box by sand or water when taken to the beach, also does not persuasively demonstrate an

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Salem, OR 97301-3881  
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1 intent that the Service Contract Laws would only apply to property used for personal,  
2 family or household purposes. *Id.* at 15, n 2.

3 The legislative history fails to rebut the presumption that the legislature’s omission  
4 of a definition of consumer that would restrict the Service Contract Laws only to personal,  
5 family or household goods was purposeful. Additionally, the plain meaning of the word  
6 “consumer” and its use in the context of the Service Contract Laws does not support  
7 TruNorth’s contention that the legislature intended the Service Contract Laws to only apply  
8 to personal, family or household goods. Finally, the legislature defined “service contract  
9 holder” to include corporations, partnerships and associations that would not be purchasing  
10 goods for personal, family or household uses. To provide the narrower scope of the law  
11 that TruNorth seeks would require the addition and removal of language from the Service  
12 Contract Laws, actions the ALJ declines to take. Therefore, the Service Contract Laws are  
13 applicable to service contracts issued or sold in Oregon for property purchased for personal  
14 or commercial uses.

15 *Service Contracts as Defined by ORS 646A.154(1)(a)*

16 Service contracts are defined in ORS 646A.154. It provides, in part:

17 (1)(a) For the purposes of this section, a service contract is a  
18 contract or agreement to perform or indemnify for a specific  
19 duration the repair, replacement or maintenance of property for  
20 operational or structural failure that results from a defect in  
21 materials, workmanship or normal wear and tear, with or without  
an additional incidental provision to pay indemnity under limited  
circumstances, including but not limited to rental and emergency  
road service[.]

22 In its Order and Notice, the Department alleged that TruNorth issued 302 service  
23 contracts in Oregon. Other than the CCW Agreement, the Department failed to provide  
24 copies of the remaining 301 service contracts. Of these 301 service contracts, the  
25 Department established that the service contract holders for these 301 service contracts  
26 provided an Oregon address, presumably in the customer identification section of the





1 TruNorth Agreements. However, just because the service contract holder has an Oregon  
2 residence/headquarters address does not mean that the service contract was issued, sold or  
3 offered for sale in Oregon. An Oregon resident can purchase property and an  
4 accompanying service contract in another state and, presumably, would list their Oregon  
5 address in the customer information section of the agreement. Therefore, absent evidence  
6 of the locations in which the CMVs and the related TruNorth Agreements were purchased,  
7 it cannot be determined, on the evidence in the record, whether the additional 301 TruNorth  
8 Agreements were issued, sold or offered for sale *in Oregon*.

9 For the CCW Agreement, the parties stipulated that the CCW Agreement was  
10 issued and sold in Oregon. Therefore, the Department established that TruNorth issued  
11 and sold a service contract in Oregon when CCW purchased the Volvo and the  
12 accompanying CCW Agreement that required TruNorth to indemnify for 36 months the  
13 repair or replacement of specific parts of the Volvo for operational and structural failures  
14 resulting from a defect in materials, workmanship, or normal wear and tear.

15 Registration and Proof of Financial Stability

16 In addition to defining service contracts, ORS 646A.154 also requires the obligor  
17 of a service contract to perform certain actions before issuing or selling a service contract.  
18 ORS 646A.152(2) defines “obligor” as “a person that is contractually obligated to the  
19 service contract holder to provide service under a service contract.” TruNorth is the  
20 business entity that is obligated to CCW to provide the services under the CCW Agreement.  
21 Therefore, TruNorth is an obligor of a service contract that was issued in Oregon and must  
22 comply with the requirements of Oregon’s Service Contract Laws.

23 ORS 646A.154 provides, in part:

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

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

\* \* \* \* \*

(5) Except as provided in subsection (6) of this section, to ensure the faithful performance of an obligor's obligations to 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 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 a net worth of at least \$100 million. If the obligor's parent company files the Form 10-K to meet the obligor's financial stability requirement, the parent company shall agree to guarantee the obligations the obligor has in service contracts the obligor sells in this state.

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

As stipulated by the parties, TruNorth did not file a registration with the Department and did not provide the Department with evidence of a reimbursement insurance policy (a policy that TruNorth never held) or any other proof of financial stability. Therefore, TruNorth violated the requirements of ORS 646A.154(3) and (5) when it issued the CCW Agreement. By failing to comply with the provisions of ORS 646A.154(3) and (5), TruNorth also violated ORS 646A.154(2) when it issued the CCW Agreement.

Obligor Identification and Conditions of Transferability

ORS 646A.156 includes additional requirements for a service contract issued or sold in Oregon. It provides, in part:

A service contract issued, sold or offered for sale in this state shall meet the following requirements:

(2) The service contract shall identify the obligor and the service contract seller.

\* \* \* \* \*

(6) The service contract shall state any terms, restrictions or

1 conditions governing the transferability of the service contract by  
the service contract holder[.]

2 In the CCW Agreement, TruNorth was identified by its truncated name “TruNorth”  
3 and not its full name TruNorth Warranty Plans of North America, LLC. ORS 646A.156(2)  
4 requires the CCW Agreement (a service contract) to identify TruNorth (the obligor). The  
5 plain meaning of “identify” is “to prove the identity of (a person or thing).” *Black’s Law*  
6 *Dictionary* 761 (8<sup>th</sup> ed 2004). In the CCW Agreement, there were sections that fully  
7 identified the service contract holder (customer), retailer (dealer) and the lien holder by  
8 listing their full names, addresses and telephone numbers. However, the CCW Agreement  
9 failed to contain such a section for the obligor (TruNorth). Although the CCW Agreement  
10 included an email address and telephone numbers for TruNorth, such contact methods do  
11 not prove the identity of TruNorth, especially as they require the service contract holder to  
12 rely upon responsive information, if any, provided by the recipient of the telephone call or  
13 email. Absent a full name and a physical address, the service contract holder cannot  
14 independently and reliably identify TruNorth. Because the CCW Agreement failed to  
15 identify TruNorth as the obligor, TruNorth violated ORS 646A.156(2) when it issued the  
16 agreement.

17 The CCW Agreement included limited language regarding the transferability of the  
18 service contract by CCW, the service contract holder. In order to transfer the CCW  
19 Agreement, CCW would have to arrange for “an approved inspection” and pay a fee to  
20 TruNorth. The CCW Agreement failed to provide any details of the requirements of “an  
21 approved inspection” or even who was to perform the “approved inspection.” The CCW  
22 Agreement also failed to state the amount of the transfer fee. By failing to state the  
23 conditions and terms of the inspection and fee that govern the transferability of the service  
24 contract, TruNorth violated ORS 646A.156(6) when it issued the CCW Agreement.

25 By failing to comply with the provisions of ORS 646A.156(2) and (6), TruNorth  
26 also violated ORS 646A.154(2) when it issued the CCW Agreement.

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1 Assessment of Civil Penalties and Issuance of a Cease and Desist Order

2 ORS 646A.162(6) provides:

3 A person who is found to have violated ORS 646A.154, 646A.156  
4 or 646A.158 may be ordered to pay to the General Fund a civil  
penalty in an amount determined by the director of not more than:

- 5 (a) \$2,000 for the first violation.
- 6 (b) \$5,000 for the second violation.
- 7 (c) \$10,000 for any subsequent violation.

8 The Department seeks to assess TruNorth \$2,000 each for its violations of ORS  
9 646A.154(3) and ORS 646A.156(2) and \$5,000 each for its violations of ORS 646A.154(5)  
10 and ORS 646A.156(6).<sup>6</sup> Although the issuance of the CCW Agreement was a single  
11 action, TruNorth violated multiple provisions of ORS 646A.154 and ORS 646A.156 by  
12 that issuance. Therefore, TruNorth is subject to a \$2,000 civil penalty for the violations of  
13 one subsection of ORS 646A.154 and one subsection of ORS 646A.156 and is liable for a  
14 \$5,000 civil penalty for the violations of the additional subsections of each of those statutes.  
15 Therefore, TruNorth owes civil penalties in the total amount of \$14,000 to the Department.

16 ORS 646A.162(5), provides, in part:

17 The director may, upon a reasonable belief that a person is or is  
18 about to be in violation of ORS 646A.154, 646A.156 or 646A.158,  
issue an order, directed to the person, to discontinue or desist from  
the violation or threatened violation[.]

19 In its Order and Notice, the Department issued an order against TruNorth for it to  
20 cease and desist violating ORS 646A.154(2), (3) and (5) and ORS 646A.156(2) and (6).  
21 As explained above, the Department established that TruNorth violated the provisions of  
22 these statutes. Therefore, pursuant to ORS 646A.162(5), the Department's cease and desist  
23 order is upheld and TruNorth must cease and desist from any further violations of ORS  
24 646A.154(2), (3) and (5) and ORS 646A.156(2) and (6).

25 \_\_\_\_\_  
26 <sup>6</sup> During the hearing, the Department noted that it sought these penalties for the violations concerning the  
CCW Agreement and that the establishment, or lack thereof, of violations for the additional 301 agreements  
was irrelevant to the determination of the penalties it sought.



1 **EXCEPTIONS**

2 The Department sets out and responds to TruNorth’s specific exceptions below:

3 1. *The Proposed Order erroneously concludes that the TruNorth Agreements are*  
4 *service contracts as defined in ORS 646A.154(1)(a).*

5 Repeating arguments made in its motion for summary determination and at hearing,  
6 TruNorth contends that “the Proposed Order erroneously concludes that Oregon Service  
7 Contract Statute, codified at ORS 646A.150 to 646A.172, applies to commercial  
8 transactions and is not a consumer protection statute (i.e. personal, family and household  
9 transactions).” (Exceptions at 2). TruNorth is incorrect.

10 TruNorth argues that the terms “consumer” and “consumer product” are defined  
11 generally within ORS chapter 646A to always refer to goods or purchasers of goods used  
12 primarily for personal, family or household purposes. (Exceptions at 3). As explained by  
13 ALJ Fair in the Proposed Order, however, these terms are not consistently defined in ORS  
14 chapter 646A, thereby demonstrating that the legislature did not intend the word  
15 “consumer” to always have the same meaning wherever it may appear in ORS chapter  
16 646A.<sup>7</sup> Indeed, as further explained in the Proposed Order, if the legislature had intended  
17 to limit the scope and application of the Service Contract Laws in the manner asserted by  
18 TruNorth, then it could have done so just as it did in the various sections of ORS chapter  
19 646A cited by TruNorth. That the legislature did not do so demonstrates that the legislature  
20 did not intend to limit the protections contained in the Service Contract Laws to  
21 transactions involving goods for personal, family or household purposes.

22 <sup>7</sup> TruNorth contends that the Proposed Order “erroneously consider[ed]” the definitions of “consumer” found  
23 in ORS 646A.430(1), ORS 646A.460, and 646A.602. (Exceptions at 5-7). However, the reasoning  
24 underlying this contention is flawed. TruNorth’s assertion with respect to ORS 646A.430(1) that “Chapter  
25 646A limits itself to regulation of motor vehicles used for personal, family, or household use” is plainly  
26 contradicted by at least ORS 646A.770(7), which encompasses vehicles “designed for ... commercial use.”  
*See also* ORS 646A.092(1)(b) (demonstrating that the legislature is capable of excluding commercial vehicles  
when that is its intent). And both ORS 646A.460 and ORS 646A.602(3) contemplate the use of the term  
“consumer” in the commercial context. *See, e.g.,* ORS 646A.462 (addressing the sale of “demonstrator[s]”);  
*and* 15 U.S.C. §1681b(3)(F)(i) (incorporated into ORS 646A.602(3) through 15 U.S.C.  
§1681a(d)(1)(C)) (addressing “consumer report[s]” in connection with “business transaction[s]”).

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1 TruNorth further argues that select statutory definitions and a specialized legal  
2 dictionary definition establish the “ordinary meaning” of the term “consumer.”  
3 (Exceptions at 5, 7-8). But, as noted above, the legislature has not consistently defined the  
4 term “consumer,” and the fact that the legislature has found it necessary to define the term  
5 shows that it is susceptible of more than one interpretation. TruNorth’s appeal to  
6 dictionaries is no more successful; as ALJ Fair explained in the Proposed Order, *Webster’s*  
7 broadly defines “consumer” as “one that utilizes economic goods, and *Black’s* provides  
8 both the broad generic definition of consumer and the narrower definition of consumer  
9 found in 15 USC § 2301(3).

10 Finally, TruNorth contends without explanation that the Proposed Order  
11 “erroneously interpreted the legislative history” and “fails to correctly conclude that like  
12 the UTPA, Oregon’s Service Contract Statute is a consumer protection statute.”  
13 (Exceptions at 8). As with TruNorth’s other arguments, ALJ Fair properly rejected these  
14 contentions in the Proposed Order. While there were occasional mentions of the word  
15 “consumer” in the legislative history, that history did not support a conclusion that the  
16 legislature intended for the Service Contract Laws to only extend to contracts covering  
17 goods for personal, family and household uses. Indeed, the legislative history showed that  
18 the legislature considered, and declined to adopt, language that would have done just that.  
19 And unlike the Service Contract Laws, the UTPA specifically provides limitations for its  
20 coverage in its definitions. *See* ORS 646.605(6)(a) (defining “real estate, goods or  
21 services” (the subject of unlawful trade practices) to mean “those that are or may be  
22 obtained primarily for personal, family or household purposes”).

23 ALJ Fair properly concluded that the Department met its burden to prove that the  
24 TruNorth Agreements were service contracts as defined in ORS 646A.154(1)(a).

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C. \$2,000 for violating ORS 646A.156(2); and

D. \$5,000 for violating ORS 646A.156(6).

2. Pursuant to ORS 646A.162(5), the Director hereby ORDERS TruNorth Warranty Plans of North America, LLC, to CEASE AND DESIST from violating ORS 646A.154(2), (3) and (5), and ORS 646A.156(2) and (6).

SO ORDERED this 23<sup>rd</sup> day of November, 2021.

ANDREW STOLFI, Director  
Department of Consumer and Business Services

/s/ Dorothy Bean  
Dorothy Bean Chief of Enforcement  
Division of Financial Regulation

**NOTICE OF RIGHT TO JUDICIAL APPEAL**

You are entitled to judicial review of this order in accordance with ORS 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon, within 60 days from the date this order is served.

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Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387

