

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 471

BY: RUBOTTOM

AS INTRODUCED

AN ACT RELATING TO INSURANCE; CREATING SERVICE
WARRANTY INSURANCE ACT; PROVIDING SHORT TITLE;
DEFINING TERMS; AUTHORIZING INSURANCE COMMISSIONER
TO ENFORCE ACT AND ADOPT RULES AND PROCEDURES;
PROHIBITING CERTAIN ACTS UNLESS LICENSED BY
INSURANCE COMMISSIONER; SETTING LICENSE FEE;
AUTHORIZING CERTAIN ACTS BY INSURER WITHOUT
ADDITIONAL LICENSURE; PROVIDING CONDITIONS FOR
LICENSURE; REQUIRING DEPOSIT AND MAINTENANCE OF
CERTAIN SECURITIES IN CERTAIN AMOUNTS; AUTHORIZING
IN LIEU BOND AND PROVIDING TERMS AND CONDITIONS
RELATED THERETO; AUTHORIZING ESCROW ACCOUNT FOR
CERTAIN ASSOCIATIONS; PROVIDING FOR DEPOSIT, RIGHT
OF EXCHANGE AND RELEASE OF SECURITIES; PROHIBITING
RIGHT TO LEVY UPON CERTAIN ASSETS AND SECURITIES;
REQUIRING MAINTENANCE OF UNEARNED PREMIUM RESERVE
FUND UNDER CERTAIN CONDITIONS; ALLOWING IN LIEU
PURCHASE OF CONTRACTUAL LIABILITY INSURANCE AND
REQUIRING INSURANCE POLICY CONTAIN CERTAIN
PROVISIONS; SETTING CERTAIN RATIO LIMITS FOR GROSS
WRITTEN PREMIUMS AND NET ASSETS; PROVIDING FOR

APPLICATION AND INFORMATION AND PROCEDURES RELATED
THERE TO; PROVIDING FOR ACCEPTANCE OR REJECTION OF
APPLICATION; PROVIDING FOR EXPIRATION AND RENEWAL
OF LICENSE AND RENEWAL FEE; PROVIDING FOR
REVOCATION, SUSPENSION AND REFUSAL TO RENEW LICENSE
AND DETERMINATION RELATED THERE TO; REQUIRING
SUSPENSION OF LICENSE WITHOUT NOTICE UNDER CERTAIN
CONDITIONS; MAKING VIOLATION OF ACT BY INSURER
GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE
OF AUTHORITY; PROVIDING FOR CERTAIN ORDER, NOTICE
AND PUBLICATION RELATING TO SUSPENSION AND
REVOCATION OF LICENSE; SETTING PERIOD OF SUSPENSION
AND RESPONSIBILITY OF ASSOCIATION DURING SUCH
PERIOD; PROVIDING FOR REINSTATEMENT; PROVIDING FOR
IN LIEU PENALTIES; REQUIRING CERTAIN FILING OF
FORMS AND FOR CANCELLATION PROVISION; PROVIDING FOR
RETURN OF PREMIUM AND CALCULATIONS RELATED THERE TO;
ALLOWING DISAPPROVAL OF FORM UNDER CERTAIN
CONDITIONS; REQUIRING FILING OF ANNUAL STATEMENT
AND PAYMENT OF PREMIUM TAX; PROVIDING PENALTY
RELATED THERE TO; AUTHORIZING COMMISSIONER TO
REQUIRE CERTAIN STATEMENTS OR SPECIAL REPORTS;
MAKING ASSOCIATIONS SUBJECT TO PERIODIC EXAMINATION
AND CONDITIONS AND FEE RELATED THERE TO; REQUIRING
ASSOCIATION MAINTAIN CERTAIN RECORDS; MAKING
ASSOCIATIONS SUBJECT TO CERTAIN SERVICE OF PROCESS;
PROHIBITING CERTAIN ACTIONS UNLESS REGISTERED AS
SALES REPRESENTATIVE; REQUIRING REGISTRATION OF
CERTAIN INFORMATION AND PAYMENT OF FILING FEE FOR
EACH SALES REPRESENTATIVE; PROHIBITING CERTAIN ACTS
UNLESS LICENSED AS INSURANCE AGENT; MAKING CERTAIN
FUNDS TRUST FUNDS AND PROVIDING PENALTY FOR CERTAIN

ACTS; PROVIDING FOR DENIAL, SUSPENSION, REVOCATION AND REFUSAL TO RENEW OR CONTINUE REGISTRATION OF SALES REPRESENTATIVES UNDER CERTAIN CONDITIONS; REQUIRING IMMEDIATE REVOCATION UNDER CERTAIN CONDITION; REQUIRING CERTAIN INVESTIGATION; REQUIRING COMMISSIONER FILE CERTAIN RECOMMENDATION WITH CERTAIN OTHER AUTHORITIES; AUTHORIZING CERTAIN ACTION IF INSURANCE AGENT VIOLATES PROVISIONS OF ACT; PROVIDING TIME PERIOD FOR SUSPENSION OF REGISTRATION AND CONDITIONS FOR REINSTATEMENT; PROHIBITING APPLICATION FOR ANOTHER REGISTRATION FOR CERTAIN TIME PERIOD AND GRANTING OF NEW REGISTRATION UNDER CERTAIN CONDITIONS; PROHIBITING CERTAIN ACTS; PROVIDING PENALTIES; CONSTRUING ACT; PROHIBITING CERTAIN ACTS AND DEFINING TERM; PROVIDING FOR DISSOLUTION OR LIQUIDATION OF ASSOCIATION; PROVIDING ADDITIONAL CRIMINAL PENALTY FOR CERTAIN ACTS; PROVIDING FOR CIVIL ACTION AND CERTAIN DAMAGES; REQUIRING POSTING OF COSTS AND CERTAIN WRITTEN NOTICE PRIOR TO BRING ACTION AND PROHIBITING ACTION IF DAMAGES ARE PAID OR CIRCUMSTANCES CORRECTED WITHIN CERTAIN TIME PERIOD; CONSTRUING SECTION; PROHIBITING CERTAIN UNFAIR OR DECEPTIVE TRADE PRACTICES; DEFINING CERTAIN METHODS, ACTS OR PRACTICES AS UNFAIR OR DECEPTIVE; AUTHORIZING COMMISSIONER TO INVESTIGATE AFFAIRS OF CERTAIN PERSONS TO DETERMINE IF CERTAIN UNFAIR OR DECEPTIVE METHODS, ACTS OR PRACTICES ARE OCCURRING; PROVIDING FOR HEARING AND SERVICE OF CHARGES; PROVIDING FOR FINAL ORDER, CERTAIN ACTIONS AND PENALTIES AND FOR APPEAL; PROVIDING ADDITIONAL PENALTIES FOR VIOLATION OF CEASE AND DESIST ORDER;

PROVIDING FOR INJUNCTIVE RELIEF; MAKING PROVISIONS
CUMULATIVE TO CERTAIN RIGHTS AND CLARIFYING EFFECT
OF ACTION OF COMMISSIONER ON SUCH RIGHTS; MAKING
CERTAIN RECORDS CONFIDENTIAL; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 6601 of Title 36, unless there
is created a duplication in numbering, reads as follows:

This act may be known and shall be cited as the "Service
Warranty Insurance Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 6602 of Title 36, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Consumer product" means tangible personal property
primarily used for personal, family, or household purposes;
2. "Department" means the Insurance Department;
3. "Gross income" means the total amount of revenue received in
connection with business-related activity;
4. "Gross written premiums" means the total amount of premiums,
inclusive of commissions, for which the association is obligated
under service warranties issued in this state;
5. "Impaired" means having liabilities in excess of assets;
6. "Indemnify" means to undertake repair or replacement of a
consumer product, in return for the payment of a segregated premium,
when such consumer product suffers operational failure;
7. "Insolvent" means unable to pay debts as they become due in
the usual course of business;

8. "Insurer" means any property or casualty insurer duly authorized to transact such business in this state;

9. "Net assets" means the amount by which the total assets of an association, excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, exceed the total liabilities of the association. For purposes of this definition, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earning of an association;

10. "Person" includes an individual, company, corporation, association, insurer, agent and any other legal entity;

11. "Premium" means the total consideration received or to be received by whatever name called, by an insurer or service warranty association for, or related to, the issuance and delivery of a service warranty, including any charges designated as assessments or fees for membership, policy, survey, inspection, or service or other charges. However, a repair charge is not a premium unless it exceeds the usual and customary repair fee charged by the association, provided the repair is made before the issuance and delivery of the warranty;

12. "Sales representative" means any person utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties and includes any individual possessing a certificate of competency who has the power to legally obligate the insurer or service warranty association or who merely acts as the qualifying agent to qualify the association in instances when a state statute or local ordinance requires a certificate of competency to engage in a particular business. However, in the case of service warranty associations selling service warranties from five or more business locations, the store manager or other person

in charge of each such location shall be considered the sales representative;

13. "Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however:

- a. maintenance service contracts under the terms of which there are no provisions for such indemnification and home warranties are expressly excluded from this definition, and
- b. the term "service warranty" does not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property;

14. "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties;

15. "Warrantor" means any person engaged in the sale of service warranties and deriving not more than fifty percent (50%) of its gross income from the sale of service warranties; and

16. "Warranty seller" means any person engaged in the sale of service warranties and deriving more than fifty percent (50%) of its gross income from the sale of service warranties.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6603 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner shall enforce this act and shall adopt rules and procedures to implement the provisions of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6604 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person in this state shall provide or offer to provide service warranties unless licensed by the Insurance Commissioner.

B. A service warranty association shall pay to the Insurance Department a license fee of Two Hundred Dollars (\$200.00) for such license for each year, or part thereof, the license is in force.

C. An insurer, while authorized to transact property or casualty insurance in this state, may also transact a service warranty business without additional qualifications or licensure as required by this act, but shall be otherwise subject to the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6605 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may not issue or renew a license to any service warranty association unless the association:

1. Is a solvent association;
 2. Furnishes the Insurance Department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the affairs of the association in compliance with law;
 3. Proposes to use and uses in its business a name together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other person already doing business in this state as will tend to mislead or confuse the public;
 4. Makes the deposit or files the bond required under this act;
- and

5. Is formed under the laws of this state or another state, district, territory, or possession of the United States, if the association is other than a natural person.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6606 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. To ensure the faithful performance of its obligations to its members of subscribers in the event of insolvency, each service warranty association shall, before the issuance of its license by the Insurance Commissioner and during such time as the association may have premiums in force in this state, deposit and maintain securities of the type eligible for deposit by insurer pursuant to Section 613 of Title 36 of the Oklahoma Statutes. Whenever the market value of the securities deposited with the Commissioner is less than ninety-five percent (95%) of the amount required, the association shall deposit additional securities or otherwise increase the deposit to the amount required. In lieu of the amounts required in Section 613 of Title 36 of the Oklahoma Statutes, such securities shall have at all times a market value as follows:

1. A new warrantor, before the issuance of its license and before receiving any premiums, shall place and maintain in trust with the Insurance Commissioner the amount of Fifty Thousand Dollars (\$50,000.00);

2. A warrantor which has Three Hundred Thousand Dollars (\$300,000.00) or less of gross written premiums in this state shall place and maintain in trust with the Commissioner an amount not less than Fifty Thousand Dollars (\$50,000.00);

3. A warrantor which has more than Three Hundred Thousand Dollars (\$300,000.00) but less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more of gross written premiums in this state shall place and maintain in trust with the Commissioner an amount equal to One Hundred Thousand Dollars (\$100,000.00);

4. A warrantor which has Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more of gross written premiums in this state shall place and maintain in trust with the Commissioner an amount equal to One Hundred Thousand Dollars (\$100,000.00);

5. All warrantors, upon receipt of written notice from the Commissioner, shall have thirty (30) calendar days in which to make additional deposits; and

6. A warranty seller shall, before the issuance of its license, place in trust with the Commissioner an amount not less than One Hundred Thousand Dollars (\$100,000.00).

B. 1. In lieu of any deposit of securities required under subsection A of this section and subject to the approval of the Commissioner, the service warranty association may file with the Commissioner a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the deposit in lieu of which it is filed. The Commissioner may not approve any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection A of this section.

2. When a bond is deposited in lieu of the required securities, no warranties may be written which provide coverage for a time period beyond the duration of such bond. The bond shall guarantee that the service warranty association will faithfully and truly perform all the conditions of any service warranty contract.

3. No such bond may be canceled or subject to cancellation unless at least sixty (60) days advance notice thereof, in writing, is filed with the Commissioner. In the event that notice of termination of the bond is filed with the Commissioner the service warranty association insured thereunder shall, within thirty (30) days of the filing of notice of termination, provide the Commissioner with a replacement bond meeting the requirements of this subsection or deposit additional securities as required under

subsection A of this section. The cancellation of a bond will not relieve the obligation of the issuer of the bond for claims arising out of contracts issued before cancellation of the bond unless a replacement bond or securities are filed. In no event may the liability of the issuer under the bond exceed the face amount of the bond. If within thirty (30) days of filing the notice of termination no replacement bond or additional security is provided, the Commissioner shall suspend the license of the association until the deposit requirements are satisfied.

C. In lieu of any deposit of securities required under subsection A of this section or the bond required under subsection B of this section and subject to the approval of the Commissioner, a warrantor which has less than Fifty Thousand Dollars (\$50,000.00) in gross written premiums as reflected in its most recent financial statement may maintain an escrow trust account with a bank or other recognized depository in this state into which shall be deposited unearned service warranty premiums. Seventy-five percent (75%) of the first-year premiums and one hundred percent (100%) of the subsequent-year premiums paid for multiyear contracts shall be deposited. No more than one-twelfth (1/12) of the total amount of first-year premiums on deposit may be withdrawn in any one (1) calendar month. No more than one-twelfth (1/12) of the total annual unearned premium for the current contract year may be withdrawn in any one calendar month.

D. Securities and bonds posted by an association pursuant to this section are for the benefit of, and subject to action thereon in the event of insolvency or impairment of any association or insurer by, any person or persons sustaining an actionable injury due to the failure of the association to faithfully perform its obligation to its warranty holders.

E. The State Treasurer is responsible for the safekeeping of all securities deposited with the Commissioner under this act. Such

securities are not, on account of being in this state, subject to taxation, but shall be held exclusively and solely to guarantee the faithful performance by the association of its obligations to its members or subscribers.

F. The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

G. Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the Commissioner proof satisfactory to the Commissioner that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the Commissioner shall release the deposited securities to the parties entitled thereto, on presentation of the receipts of the Commissioner for such securities, or shall release any bond filed with it in lieu of such deposit.

H. No judgment creditor or other claimant of a service warranty association shall have the right to levy upon any of the assets or securities held in this state as a deposit pursuant to this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6607 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An association licensed under this act shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of twenty-five percent (25%) of the gross written premiums received on all warranty contracts in force, wherever written. In the case of multiyear contracts which are offered by associations having net assets of less than Five Hundred Thousand Dollars (\$500,000.00) for which premiums are collected in

advance for coverage in a subsequent year, one hundred percent (100%) of the premiums for such subsequent years shall be placed in the funded, unearned premium reserve account.

B. An association will not be required to establish an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the Insurance Commissioner that one hundred percent (100%) of its claim exposure is covered by such policy. The contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the Commissioner as financially capable of meeting the obligations incurred pursuant to the policy. For the purposes of this subsection, the contractual liability policy shall contain the following provisions:

1. In the event that the service warranty association is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contract liability insurer will pay losses and unearned premiums under such plans directly to the person making a claim under the contract;

2. The insurer issuing the contractual liability policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so; and

3. The policy may not be canceled or not renewed by either the insurer or the association unless sixty (60) days' written notice thereof has been given to the Commissioner by the insurer before the date of such cancellation or nonrenewal.

C. No warrantor may allow its gross written premiums to exceed seven to one ratio to net assets.

D. No warranty seller may allow its gross written premiums to exceed a five to one ratio to net assets.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6608 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An application for license as a service warranty association shall be made to, and filed with, the Insurance Commissioner on printed forms as prescribed and furnished by the Insurance Commissioner.

B. In addition to information relative to its qualifications as required under Section 5 of this act, the Commissioner may require that the application shows:

1. The location of the applicant's home office;
2. The name and residence address of each director or officer of the applicant; and
3. Such other pertinent information as may be required by the Commissioner.

C. The Commissioner may require that the application, when filed, be accompanied by:

1. A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary;
2. A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers; and
3. A license fee in the amount of Two Hundred Dollars (\$200.00) as required pursuant to Section 3 of this act.

D. Upon completion of the application for license, the Commissioner shall examine the application and make such further investigation of the applicant as it deems advisable. If the Commissioner finds that the applicant is qualified the Commissioner shall issue to the applicant a license as a service warranty association. If the Commissioner does not find the applicant to be

qualified the Commissioner shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6609 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each license issued to a service warranty association under this act shall expire on June 1 next following the date of issuance. If the association is then qualified therefor under the provision of this act, its license may be renewed annually, upon its request, and upon payment to the Insurance Commissioner of the license fee in the amount of Two Hundred Dollars (\$200.00) in advance for each such license year.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6610 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The license of any service warranty association may be revoked or suspended, or the Insurance Commissioner may refuse to renew any such license, if it is determined that the association has violated any lawful rule or order of the Commissioner or any provision of this act.

B. The license of any service warranty association shall be suspended or revoked if it is determined that such association:

1. Is in an unsound financial condition, or is in such condition as would render its further transaction of service warranties in this state hazardous or injurious to its warranty holders or to the public;

2. Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the Commissioner;

3. Has failed to pay any final judgment rendered against it in this state within sixty (60) days after the judgment became final;

4. Has, without just cause, refused to pay proper claims arising under its service warranties or, without just cause, has compelled warranty holders to accept less than the amount due them, or to employ attorneys, or to bring suit against the association to secure full payment or settlement of such claims;

5. Is affiliated with and under the same general management or interlocking directorate or ownership as, another service warranty association which transacts direct warranties in this state without having a license; or

6. Is using such methods or practices in the conduct of its business as would render its further transaction of service warranties in this state hazardous or injurious to its warranty holders or to the public.

C. The Commissioner may at his discretion and without advance notice or hearing immediately suspend the license of any service warranty association if it finds that one or more of the following circumstances exist:

1. The association is insolvent or impaired;

2. The reserve account required by this act is not being maintained.

3. A proceeding for receivership, conservatorship rehabilitation or any other delinquency proceeding regarding the association has been commenced in any state; or

4. The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

D. A violation of this act by an insurer is grounds for suspension or revocation of the insurer's certificate of authority in this state.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6611 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Suspension or revocation of a service warranty association's license shall be by order of the Insurance Commissioner mailed to the association by registered or certified mail. The Commissioner shall also promptly give notice of such suspension or revocation the association's sales representatives in this state which are of record in the Insurance Department. The association shall not solicit or acquire any new service warranties in this state during the period of any such suspension or revocation.

B. At his discretion, the Commissioner may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6612 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A suspension of the license of a service warranty association shall be for such period, not to exceed one (1) year, as is fixed in the order of suspension, unless such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

B. During the period of suspension, the association shall file its annual statement and pay any fees as required under this act as if the license had been continued in full force.

C. Upon expiration of the suspension period, if within such period the license has not otherwise terminated the license of the association shall automatically be reinstated, unless the causes of the suspension have not been removed or the association is otherwise not in compliance with the requirements of this act. Upon reinstatement of the license of an association or upon reinstatement of the certificate of authority of an insurer, following suspension,

the authority of the sales representatives of the association in this state to represent the association or insurer shall likewise be reinstated.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6613 of Title 36, unless there is created a duplication in numbering, reads as follows:

If the Insurance Commissioner finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this act, the Commissioner may, in lieu of such suspension or revocation, impose a fine upon the insurer or service warranty association in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation; however, if it is found that an insurer or service warranty association has knowingly and willfully violated a lawful rule or order of the Commissioner or any provision of this act, the Commissioner may impose a fine upon the insurer or association in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6614 of Title 36, unless there is created a duplication in numbering, reads as follows:

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

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

C. Each service warranty contract shall contain a cancellation provision. In the event the contract is canceled by the warranty holder, return of premium shall be based upon ninety percent (90%) of unearned pro-rata premium less any claims that have been paid.

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 premium.

D. The commissioner shall disapprove any form filed pursuant to this section if the form:

1. Violates this act;
2. Is misleading in any respect; or
3. Is reproduced so that any material provision is substantially illegible.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6615 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In addition to the license fees provided in this act for service warranty associations each such association and insurer shall, annually on or before the last day of February, file with the Insurance Commissioner its annual statement in the form prescribed by the Commissioner showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and using accounting principles which will enable the Commissioner to ascertain whether the financial requirements set forth in Section 7 of this act have been satisfied.

B. Premiums and assessments received by insurers are subject to any premium tax provided for in Section 624 of Title 36 of the Oklahoma Statutes.

C. The Commissioner may levy a fine of up to One Hundred Dollars (\$100.00) a day for each day an association neglects to file the annual statement in the form and within the time provided by this act.

D. In addition to an annual statement, the Commissioner may require of licensees, under oath and in the form prescribed by it,

quarterly statements or special reports which it deems necessary to the proper supervision of licensees under this act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6616 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Service warranty associations licensed pursuant to this act are subject to periodic examination by the Insurance Commissioner, in the same manner and subject to the same terms and conditions that apply to insurers.

B. The Commissioner is not required to examine an association that has less than Twenty Thousand Dollars (\$20,000.00) in gross written premiums as reflected in its most recent annual statement. The Commissioner may examine such an association if it has reason to believe that the association may be in violation of this act or is otherwise in an unsound financial condition. If the Commissioner examines such an association the examination fee may not exceed five percent (5%) of the gross written premiums of the association.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6617 of Title 36, unless there is created a duplication in numbering, reads as follows:

As a minimum requirement for permanent office records, each licensed service warranty association shall maintain:

1. A complete set of accounting records, including but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers and accounts payable registers;

2. A detailed warranty register of warranties in force, by unique identifier. The register shall include the unique identifier, date of issue, issuing sales representative, name of warranty holder, location of the property, warranty period, gross premium, commission to sales representative, and net premium; and

3. A detailed centralized claims or service record register which includes the unique identifier, date of issue, date of claim, issuing service representative, amount of claim or service, date claim paid, and, if applicable, disposition other than payment and reason therefor.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6618 of Title 36, unless there is created a duplication in numbering, reads as follows:

Service warranty associations are subject to service of process in the same manner and subject to the same terms, conditions, and fees as apply to insurers.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6619 of Title 36, unless there is created a duplication in numbering, reads as follows:

No person shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person is registered as a sales representative or acts under the supervision of a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6620 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each service warranty association or insurer shall, on forms prescribed by the Insurance Commissioner, register, on or before March 1 of each odd-numbered year, the name and business address of each sales representative utilized by it in this state and shall, within thirty (30) days after termination of the contract, notify the Commissioner of such termination. At the time of biennial registration, a Forty Dollar (\$40.00) filing fee for each sales representative shall be paid by the service warranty association or insurer to the Commissioner. Any sales representative utilized subsequent to the March 1 filing date shall be registered with the

Commissioner with ten (10) days after such utilization. No employee or sales representative of a service warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent, unless so qualified and licensed pursuant to Section 1421 et seq. of Title 36 of the Oklahoma Statutes.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6621 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All funds belonging to insurers, service warranty associations, or others received by a sales representative in transactions under his registration are trust funds so received by such agent in a fiduciary capacity; and the agent, in the applicable regular course of business, shall account for and pay such funds to the insurer, association, warranty holder, or other person entitled thereto.

B. Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is guilty of embezzlement.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6622 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commission shall deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

1. Material misstatement, misrepresentation, or fraud in registration;

2. The registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this act;

3. Willful misrepresentation of any service warranty contract or willful deception with regard to any such contract, done either

in person or by any form of dissemination of information or advertising;

4. In the adjustment of claims arising out of warranties, material misrepresentation to a service warranty holder or other interested party of the terms and coverage of a contract with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract;

5. Demonstrated lack of fitness or trustworthiness to engage in the business of service warranty;

6. Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration;

7. Fraudulent or dishonest practices in the conduct of business under the registration;

8. Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of business under the registration;

9. Rebating, or attempting to rebate, or unlawfully dividing, or offering to divide, his commission with another;

10. Willful failure to comply with, or willful violation of, any proper order or rule of the Commissioner, or willful violation of any provision of this act; or

11. Being found guilty of or pleading nolo contendere to a felony or a crime punishable by imprisonment of one (1) year or more under the law of the United States of America or any state thereof or under the law of any other country involving moral turpitude, without regard to whether judgment of conviction has been entered by the court having jurisdiction of such case.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6623 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under Section 22 of this act:

1. Any cause for which granting of the registration could have been refused had it then existed and been known to the Commissioner;
2. Violation of any provision of this act, or of any other law applicable to the business of service warranties, in the course of dealings under the registration;
3. Violation of any lawful order or rule of the Commissioner;
4. Failure or refusal to pay over, upon demand, to any service warranty association or insurer he represents or has represented any money coming into his hands which belongs to the association or insurer;
5. In the conduct of business under the registration, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this act, or otherwise showing himself to be a source of injury or loss to the public or detriment to the public interest; or
6. Being found guilty of or pleading guilty or nolo contendere to a felony or a crime punishable by imprisonment of one (1) year or more under the law of the United States of America or any state thereof or under the law of any other country, without regard to whether judgement of conviction has been entered by the court having jurisdiction of such case.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6624 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If any sales representative is convicted by a court of a violation of any provision of this act, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the Insurance Commissioner.

B. If, after an investigation or upon other evidence, the Commissioner has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the registration of any sales representative, as such grounds are specified in Sections 22 and 23 of this act, the Commissioner may proceed to suspend, revoke, or refuse to renew or continue the registration, as the case may be.

C. If such registered sales representative also holds a license to perform professional services of the type covered by the service warranty issued, the Commissioner shall file with the regulatory authority that issued such license a recommendation that such license be suspended or revoked. Such regulatory authority shall promptly review the recommendation and take appropriate action in accordance with its laws and rules to suspend or revoke such license.

D. Whenever it appears that any licensed insurance agent has violated the provisions of this act, the Commissioner may take such action relative thereto as is authorized by the Insurance Code for a violation of the Insurance Code by such agent.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6625 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall, in its order suspending a registration, specify the time period during which the suspension is

to be in effect. Such period may not exceed one (1) year. The registration shall remain suspended during the period so specified, subject to any rescission or modification of the order by the Commissioner before the expiration of the suspension period. A registration which has been suspended may not be reinstated except upon request, but the Commissioner may not grant such reinstatement if it finds that the circumstances for which the registration was suspended still exist or are likely to recur.

B. No person whose registration has been revoked by the Commissioner has the right to apply for another registration within two (2) years from the effective date of such revocation or, if judicial review of such revocation is sought, within two (2) years from the date of the final court order or decree affirming the revocation. The Commissioner, however, may not grant a new registration if it finds that circumstance or circumstances for which the previous registration was revoked still exist or are likely to recur.

C. The Commissioner may not grant or issue any registration to any individual whose registration has been revoked twice.

D. During the period of suspension, or after revocation of the registration, the former registrant may not engage in or attempt to engage in any transaction or business for which a registration is required under this act.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6626 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. If, pursuant to procedures provided for in this act, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, on a first offense and except when such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an

administrative penalty for each violation in the amount of One Hundred Dollars (\$100.00), or in the event of willful misconduct or willful violation on the part of the registrant, an administrative find not to exceed One Thousand Dollars (\$1,000.00) for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related.

B. The order may allow the registrant a reasonable period, not to exceed thirty (30) days, within which to pay to the Insurance Commissioner the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the Commissioner within the period allowed, the registration of the registrant shall stand suspended or revoked or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6627 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be deemed to authorize any service warranty association to transact any insurance business other than that of service warranty as herein defined or otherwise to engage in any other type of insurance unless the association is authorized under a certificate of authority issued by the Insurance Commissioner.

B. No authorized insurer or licensed service warranty association may act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A "fronting company" is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty

associations, the risk of loss under warranties written by it in this state.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6628 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any dissolution or liquidation of an association subject to the provisions of this act shall be under the supervision of the Insurance Commissioner, who shall have all powers granted under the laws of this state with respect to the dissolution and liquidation of property and casualty insurers.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6629 of Title 36, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in this act, any person who knowingly makes a false or otherwise fraudulent application for license or registration under this act, or who knowingly violates any provision of this act, in addition to being subject to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, is guilty of a misdemeanor. Each instance of violation shall be considered a separate offense.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6630 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any person damaged by a violation of the provisions of this act may bring a civil action against a person violating such provisions in the district court of the county in which the alleged violator resides or has his principal place of business or in the county in which the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or Five Hundred Dollars (\$500.00) whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff.

B. No punitive damages may be awarded under this section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are:

1. Willful, wanton, and malicious; or
2. In reckless disregard for the rights of any insured.

C. Any person who pursues a claim under this section shall post in advance the costs of discovery. Such costs shall be awarded to the insurer if no punitive damages are awarded to the plaintiff.

D. As a condition precedent to bringing an action under this section, the Insurance Commissioner and the insurer shall be given written notice of the violation. The notice shall state with specificity the facts which allegedly constitute the violation and the law upon which the plaintiff is relying and shall state that such notice is given in order to perfect the right to pursue the civil remedy authorized by this section. No action will lie if, within thirty (30) days thereafter, the damages are paid or the circumstances giving rise to the violation are corrected.

E. This section shall not be construed to authorize a class action suit against a service warranty association or a civil action against the Insurance Department, its employees, or the Insurance Commissioner.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6631 of Title 36, unless there is created a duplication in numbering, reads as follows:

No person may engage in this state in any trade practice which is defined in this act as, or determined pursuant to Section 33 of this act to be, an unfair method of competition or an unfair or deceptive act or practice involving the business of service warranty.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6632 of Title 36, unless there is created a duplication in numbering, reads as follows:

The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

1. MISREPRESENTATION AND FALSE ADVERTISING OF INSURANCE

POLICIES - Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

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

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

- a. in a newspaper, magazine, or other publication,
- 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, or
- e. causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement; or
- f. making any false entry of a material fact in any book, report, or statement of any person.

5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- a. attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder,
- b. making a material misrepresentation to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract, or
- c. committing or performing with such frequency as to indicate a general business practice any of the following practices:
 - (1) failure properly to investigate claims,
 - (2) misrepresentation of pertinent facts or contract provisions relating to coverages at issue,

- (3) failure to acknowledge and act promptly upon communications with respect to claims,
- (4) denial of claims without conducting reasonable investigations based upon available information,
- (5) failure to affirm or deny coverage of claims upon written request of the warranty holder within a reasonable time after proof-of-loss statements have been completed, or
- (6) failure to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

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

7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to

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

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6633 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner has the power to examine and investigate the affairs of every person involved in the business of service warranty in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this act.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6634 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Whenever the Insurance Commissioner has reason to believe that any person has engaged, or is engaging, in this state in any

unfair method of competition or any unfair or deceptive act or practice as defined in Section 32 of this act, or is engaging in the business of service warranty without being properly licensed as required by this act, and that a proceeding by the Commissioner in respect thereto would be in the interest of the public, the Commissioner shall conduct or cause to have conducted a hearing in accordance with Article II of the Administrative Procedures Act, Section 309 et seq. of Title 75 of the Oklahoma Statutes.

B. A statement of charges, notice, or order under this act may be served by anyone duly authorized by the Insurance Commissioner, either in the manner provided by law for service of process in civil actions or be certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6635 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. After the hearing, the Insurance Commissioner shall enter a final order. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of service warranty business, the Commissioner also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of service warranty business. Further, the Commissioner may, at his discretion, order any one or more of the following penalties:

1. The suspension or revocation of such person's license, or eligibility for any license, if he knew, or reasonably should have known, he was in violation of the act; or

2. If it is determined that the person charged has provided or offered to provide service warranties without proper licensure, the imposition of an administrative penalty not to exceed One Thousand Dollars (\$1,000.00) for each service warranty contract offered or effectuated.

B. Any person subject to an order of the Insurance Commissioner under this section may obtain a review of such order by filing an appeal in accordance with the provisions of the Administrative Procedures Act.

C. Any person who violates a cease and desist order while such order is in effect, after notice and hearing, is subject, at the discretion of the Commissioner, to any one or more of the following penalties:

1. A monetary penalty of not more than Fifty Thousand Dollars (\$50,000.00) as to all matters determined in such hearing; and

2. The suspension or revocation of such person's license or eligibility to hold a license.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6636 of Title 36, unless there is created a duplication in numbering, reads as follows:

In addition to the penalties and other enforcement provisions of this act, if any person violates any provision of Section 4 or Section 20 of this act or any rule adopted pursuant thereto, the Insurance Commissioner may resort to a proceeding for injunction in the district court of the county where such person resides or has principal place of business, and therein apply for such temporary and permanent orders as the Commissioner may deem necessary to restrain such person from engaging in any such activities, until such person has complied with such provision or rule.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6637 of Title 36, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are cumulative to rights under the general civil and common law, and no action of the Insurance Commissioner will abrogate such rights to damages or other relief in any court.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6638 of Title 36, unless there is created a duplication in numbering, reads as follows:

All active examination or investigatory records of the Insurance Commissioner made or received pursuant to this act shall be deemed privileged and confidential and are not subject to public inspection for so long as is reasonably necessary to complete the examination or investigation.

SECTION 39. This act shall become effective September 1, 1991.

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