

EHB 1539

THE STATE SENATE
Monday, April 11, 2005

ENGROSSED

House Bill No. 1539

As Amended

ENGROSSED HOUSE BILL NO. 1539 - By: PETERSON (Ron) of the House and
CORN of the Senate.

[insurance - amending fifteen sections in Title 36 -
Service Warranty Insurance Act - exemptions - repealing 36
O.S., Section 6606 - effective date]

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6601, is
amended to read as follows:

Section 6601. Sections ~~± 6601~~ through ~~39 6639~~ of this ~~act~~ title
shall be known and may be cited as the "Service Warranty Insurance
Act".

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6602, as
last amended by Section 1, Chapter 169, O.S.L. 2004 (36 O.S. Supp.
2004, Section 6602), is amended to read as follows:

Section 6602. As used in the Service Warranty Insurance Act:

1. "Commissioner" means the Insurance Commissioner;
2. "Consumer product" means tangible personal property
primarily used for personal, family, or household purposes;
3. "Department" means the Insurance Department;

1 4. "Gross income" means the total amount of revenue received in
2 connection with business-related activity;

3 5. "Gross written ~~premiums~~ consideration" means the total
4 amount of ~~premiums~~ consideration, inclusive of commissions, for
5 which the association is obligated under service warranties issued
6 in this state;

7 6. "Impaired" means having liabilities in excess of assets;

8 7. "Indemnify" means to undertake repair or replacement of a
9 consumer product or a newly-constructed residential structure,
10 including any appliances, electrical, plumbing, heating, cooling or
11 air conditioning systems, in return for the payment of a segregated
12 premium, when the consumer product or residential structure becomes
13 defective or suffers operational failure;

14 8. "Insolvent" means any actual or threatened delinquency
15 including, but not limited to, any one or more of the following
16 circumstances:

17 a. an association's total liabilities exceed the total
18 assets of the association,

19 b. the business of any such association is being
20 conducted fraudulently, or

21 c. the association has knowingly overvalued its assets;

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

1 10. "Net assets" means the amount by which the total assets of
2 an association, excluding goodwill, franchises, customer lists,
3 patents or trademarks, and receivables from or advances to officers,
4 directors, employees, salesmen, and affiliated companies, exceed the
5 total liabilities of the association. For purposes of the Service
6 Warranty Insurance Act, the term "total liabilities" does not
7 include the capital stock, paid-in capital, or retained earnings of
8 an association;

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

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

21 13. "Sales representative" means any person utilized by an
22 insurer or service warranty association for the purpose of selling
23 or issuing service warranties and includes any individual possessing

1 a certificate of competency who has the power to legally obligate
2 the insurer or service warranty association or who merely acts as
3 the qualifying agent to qualify the association in instances when a
4 state statute or local ordinance requires a certificate of
5 competency to engage in a particular business. ~~However, in the case~~
6 ~~of service warranty associations selling service warranties from~~
7 ~~five or more business locations, the store manager or other person~~
8 ~~in charge of each such location shall be considered the sales~~
9 ~~representative;~~

10 14. "Service warranty" means ~~any warranty, home warranty,~~
11 ~~guaranty, extended warranty or extended guaranty, contract~~
12 ~~agreement, or other written promise entered into between a consumer~~
13 ~~and a service warranty association under the terms of which there is~~
14 ~~an undertaking to indemnify against the cost of repair or~~
15 ~~replacement of a consumer product or newly constructed residential~~
16 ~~structure, including any appliances, electrical, plumbing, heating,~~
17 ~~cooling or air conditioning systems, in return for the payment of a~~
18 ~~segregated charge by the consumer~~ a contract or agreement for a
19 separately stated consideration for a specific duration to perform
20 the repair or replacement of property or indemnification for repair
21 or replacement for the operational or structural failure due to a
22 defect in materials or workmanship, with or without additional
23 provision for incidental payment of indemnity under limited

1 circumstances, including, but not limited to, failure due to normal
2 wear and tear, towing, rental and emergency road service, road
3 hazard, power surge, and accidental damage from handling; however:

4 a. maintenance service contracts under the terms of which
5 there are no provisions for such indemnification are
6 expressly excluded from this definition,

7 b. those contracts issued solely by the manufacturer,
8 distributor, importer or seller of the product, or any
9 affiliate or subsidiary of the foregoing entities,
10 whereby such entity has contractual liability
11 insurance in place, from a company licensed in the
12 state, which covers one hundred percent (100%) of the
13 claims exposure on all contracts written without being
14 predicated on the failure to perform under such
15 contracts, are expressly excluded from this
16 definition,

17 c. the term "service warranty" does not include service
18 contracts entered into between consumers and nonprofit
19 organizations or cooperatives the members of which
20 consist of condominium associations and condominium
21 owners, which contracts require the performance of
22 repairs and maintenance of appliances or maintenance
23 of the residential property,

1 d. the term "service warranty" does not include
2 warranties, guarantees, extended warranties, extended
3 guarantees, contract agreements or any other service
4 contracts issued by a company which performs at least
5 seventy percent (70%) of the service work itself and
6 not through subcontractors, which has been selling and
7 honoring such contracts in Oklahoma for at least
8 twenty (20) years, and

9 e. the term "service warranty" does not include
10 warranties, guarantees, extended warranties, extended
11 guarantees, contract agreements or any other service
12 contracts, whether or not such service contracts
13 otherwise meet the definition of "service warranty",
14 issued by a company which has net assets in excess of
15 One Hundred Million Dollars (\$100,000,000.00). ~~The~~
16 ~~calculation of the net assets shall include the assets~~
17 ~~of a parent company. When the net assets of the~~
18 ~~parent company are used to calculate the total net~~
19 ~~assets of the company, A service warranty association~~
20 may use the net assets of a parent company to qualify
21 under this section if the net assets of the company
22 issuing the policy ~~shall~~ total at least Twenty-five
23 Million Dollars (\$25,000,000.00) and the parent

1 company maintains net assets of at least Seventy-five
2 Million Dollars (\$75,000,000.00);

3 15. "Service warranty association" or "association" means any
4 person, other than an authorized insurer, ~~issuing service warranties~~
5 contractually obligated to a service contract holder under the terms
6 of a service warranty; provided, this term shall not mean any person
7 engaged in the business of erecting or otherwise constructing a new
8 home;

9 16. "Warrantor" means any service warranty association engaged
10 in the sale of service warranties and deriving not more than fifty
11 percent (50%) of its gross income from the sale of service
12 warranties; and

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

17 SECTION 3. AMENDATORY 36 O.S. 2001, Section 6604, is
18 amended to read as follows:

19 Section 6604. A. No person in this state shall ~~provide or~~
20 ~~offer to provide service warranties~~ act as a service warranty
21 association unless licensed by the Insurance Commissioner.

22 B. A service warranty association shall pay to the Insurance
23 Department a license fee of ~~Two Hundred Dollars (\$200.00)~~ Three

1 Hundred Dollars (\$300.00) for such license for each year, or part
2 thereof, the license is in force. All license fees received
3 pursuant to this section shall be paid into the State Treasury to
4 the credit of the Insurance Commissioner Revolving Fund and shall be
5 used for the implementation of the Service Warranty Insurance Act.

6 C. An insurer, while authorized to transact property or
7 casualty insurance in this state, may also transact a service
8 warranty business without additional qualifications or licensure as
9 required by the Service Warranty Insurance Act, but shall be
10 otherwise subject to the provisions of the Service Warranty
11 Insurance Act.

12 D. A service warranty association may appoint an administrator
13 or other designee to be responsible for any or all of the
14 administration of service contracts and compliance with this act.

15 E. An agreement which provides specified scheduled maintenance
16 services over a stated period of time does not constitute insurance
17 or a service warranty.

18 SECTION 4. AMENDATORY 36 O.S. 2001, Section 6605, is
19 amended to read as follows:

20 Section 6605. The Insurance Commissioner shall not issue or
21 renew a license to any service warranty association unless the
22 association:

23 1. Is a solvent association;

1 2. Furnishes the Insurance Department with evidence
2 satisfactory to it that the management of the association is
3 competent and trustworthy and can successfully manage the affairs of
4 the association in compliance with law;

5 3. Proposes to use and uses in its business a name together
6 with a trademark or emblem, if any, which is distinctive and not so
7 similar to the name or trademark of any other person already doing
8 business in this state as will tend to mislead or confuse the
9 public; and

10 4. ~~Makes the deposit or files the bond required by the Service~~
11 ~~Warranty Insurance Act; and~~

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

15 SECTION 5. AMENDATORY 36 O.S. 2001, Section 6607, is
16 amended to read as follows:

17 Section 6607. A. An association licensed pursuant to the
18 Service Warranty Insurance Act shall maintain a funded, unearned
19 ~~premium~~ reserve account, consisting of unencumbered assets, equal to
20 a minimum of twenty-five percent (25%) of the gross written ~~premiums~~
21 consideration received on all warranty contracts in force, wherever
22 written. In the case of multiyear contracts which are offered by
23 associations having net assets of less than Five Hundred Thousand

1 Dollars (\$500,000.00) for which ~~premiums are~~ consideration is
2 collected in advance for coverage in a subsequent year, one hundred
3 percent (100%) of the ~~premiums~~ consideration for such subsequent
4 years shall be placed in the funded, unearned ~~premium~~ reserve
5 account.

6 B. An association shall not be required to establish an
7 unearned ~~premium~~ reserve or demonstrate minimum net worth if it has
8 purchased ~~contractual liability~~ an insurance policy which
9 demonstrates to the satisfaction of the Insurance Commissioner that
10 one hundred percent (100%) of its claim exposure is covered by such
11 policy and satisfies the requirements of this section. The
12 ~~contractual liability~~ insurance shall be obtained from an insurer
13 that ~~holds a certificate of authority to do business within the~~
14 ~~state or from an insurer approved by the Commissioner as financially~~
15 ~~capable of meeting the obligations incurred pursuant to the policy~~
16 is licensed, registered, or otherwise authorized to do business in
17 this state and that meets the requirements of subsection C of this
18 section. For the purposes of this subsection, the ~~contractual~~
19 ~~liability~~ insurance policy shall contain the following provisions:

20 1. In the event that the service warranty association is unable
21 to fulfill its obligation under contracts issued in this state for
22 any reason, including insolvency, bankruptcy, or dissolution, the
23 contract liability insurer will pay losses and unearned ~~premiums~~

1 consideration under such plans directly to the person making a claim
2 under the contract;

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

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

11 C. The insurer providing the insurance policy used to satisfy
12 the financial responsibility requirements of subsection B of this
13 section must meet one of the following standards:

14 1. The insurer shall, at the time the policy is filed with the
15 Commissioner, and continuously thereafter:

16 a. maintain surplus as to policyholders and paid-in
17 capital of at least Fifteen Million Dollars
18 (\$15,000,000.00), and

19 b. annually file copies of the insurer's audited
20 financial statements, its NAIC Annual Statement, and
21 the actuarial certification required by and filed in
22 the insurer's state of domicile; or

1 2. The insurer shall, at the time the policy is filed with the
2 Commissioner, and continuously thereafter:

3 a. maintain surplus as to policyholders and paid-in
4 capital of less than Fifteen Million Dollars
5 (\$15,000,000.00) but at least equal to Ten Million
6 Dollars (\$10,000,000.00),

7 b. demonstrate to the satisfaction of the Commissioner
8 that the company maintains a ratio of net written
9 premiums, wherever written, to surplus as to
10 policyholders and paid-in capital of not greater than
11 three to one, and

12 c. annually file copies of the audited financial
13 statements of the insurer, its NAIC Annual Statement,
14 and the actuarial certification required by and filed
15 in the state of domicile of the insurer.

16 D. No warrantor or warranty seller shall allow its gross
17 written premiums consideration to exceed seven to one ratio to net
18 assets.

19 ~~D. No warranty seller shall allow its gross written premiums to~~
20 ~~exceed a five to one ratio to net assets.~~

21 E. If the gross written ~~premiums~~ consideration of a warrantor
22 or a warranty seller exceed the required net asset ratios, the

1 Commissioner may require, in addition to other measures as the
2 Commissioner deems necessary, any one or more of the following:

- 3 1. A complete review of financial condition;
- 4 2. An increase in deposit;
- 5 3. A suspension of any new writings; or
- 6 4. Capital infusion into the business.

7 SECTION 6. AMENDATORY 36 O.S. 2001, Section 6614, is
8 amended to read as follows:

9 Section 6614. A. No service warranty form or related form
10 shall be issued or used in this state unless the form has been filed
11 with and approved by the Insurance Commissioner.

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

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

1 percent (100%) of unearned pro rata ~~premium~~ consideration less the
2 actual cost of any service provided under the service warranty
3 contract.

4 D. The Commissioner shall disapprove any form filed pursuant to
5 this section if the form:

6 1. Violates the Service Warranty Insurance Act;

7 2. Is misleading in any respect; or

8 3. Is reproduced so that any material provision is
9 substantially illegible.

10 SECTION 7. AMENDATORY 36 O.S. 2001, Section 6615, as
11 amended by Section 2, Chapter 169, O.S.L. 2004 (36 O.S. Supp. 2004,
12 Section 6615), is amended to read as follows:

13 Section 6615. A. In addition to the license fees provided in
14 the Service Warranty Insurance Act for service warranty associations
15 each such association and insurer shall, annually on or before the
16 last day of February, file with the Insurance Commissioner its
17 annual statement in the form prescribed by the Commissioner showing
18 ~~all premiums~~ gross written consideration or assessments received by
19 it in connection with the issuance of service warranties in this
20 state during the preceding calendar year and other relevant
21 financial information as deemed necessary by the Commissioner, using
22 accounting principles which will enable the Commissioner to

1 ascertain whether the financial requirements set forth in Section
2 6607 of this title have been satisfied.

3 B. The Commissioner may levy a fine of up to One Hundred
4 Dollars (\$100.00) a day for each day an association neglects to file
5 the annual statement in the form and within the time provided by the
6 Service Warranty Insurance Act.

7 C. In addition to an annual statement, the Commissioner may
8 require of licensees, under oath and in the form prescribed by it,
9 quarterly statements or special reports which the Commissioner deems
10 necessary for the proper supervision of licensees under the Service
11 Warranty Insurance Act.

12 D. ~~Premiums~~ Consideration and assessments received by
13 associations and insurers for service warranties shall not be
14 subject to the premium tax provided for in Section 624 of this
15 title, but shall be subject to an administrative fee of Two Dollars
16 (\$2.00) for each service warranty issued that provides coverage not
17 to exceed Seventy-five Dollars (\$75.00), Five Dollars (\$5.00) for
18 each service warranty issued that provides coverage in excess of
19 Seventy-five Dollars (\$75.00) but not to exceed Two Hundred Fifty
20 Dollars (\$250.00), and Ten Dollars (\$10.00) for each service
21 warranty that provides coverage in excess of Two Hundred Fifty
22 Dollars (\$250.00). However, associations and insurers that have
23 contractual liability insurance in place, from ~~a company licensed or~~

1 ~~registered to issue automobile service warranties in the state, an~~
2 insurer which satisfies the requirements of subsection C of Section
3 6607 of this title and which covers one hundred percent (100%) of
4 the claims exposure of the association or insurer on all contracts
5 written without being predicated on the failure to perform under
6 such contracts shall be subject to an annual administrative fee of
7 Two Thousand Five Hundred Dollars (\$2,500.00). Said fees shall be
8 paid quarterly to the Insurance Commissioner. All such fees, up to
9 a maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00)
10 per year, received by the Insurance Commissioner shall be deposited
11 into the State Treasury to the credit of the Insurance Commissioner
12 Revolving Fund for the payment of costs incurred by the Insurance
13 Department in the administration of the Service Warranty Insurance
14 Act. Amounts received in excess of the annual limitation shall be
15 deposited to the credit of the General Revenue Fund.

16 SECTION 8. AMENDATORY 36 O.S. 2001, Section 6616, is
17 amended to read as follows:

18 Section 6616. A. Service warranty associations licensed
19 pursuant to the Service Warranty Insurance Act are subject to
20 periodic examination by the Insurance Commissioner, in the same
21 manner and subject to the same terms and conditions that apply to
22 insurers.

1 B. The Commissioner is not required to examine an association
2 that has less than Twenty Thousand Dollars (\$20,000.00) in gross
3 written ~~premiums~~ consideration as reflected in its most recent
4 annual statement. The Commissioner may examine such an association
5 if the Commissioner has reason to believe that the association may
6 be in violation of the Service Warranty Insurance Act or is
7 otherwise in an unsound financial condition. If the Commissioner
8 examines such an association the examination fee shall not exceed
9 five percent (5%) of the gross written ~~premiums~~ consideration of the
10 association.

11 SECTION 9. AMENDATORY 36 O.S. 2001, Section 6617, is
12 amended to read as follows:

13 Section 6617. As a minimum requirement for permanent office
14 records, each licensed service warranty association shall maintain:

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

19 2. A detailed warranty register of warranties in force, ~~by~~
20 ~~unique identifier~~. The register shall include the ~~unique~~
21 ~~identifier~~, date of issue, issuing sales representative, ~~name of~~
22 ~~warranty holder~~, ~~location of the property~~, warranty period, gross

1 ~~premium~~ consideration, commission to sales representative, and net
2 ~~premium~~ consideration; and

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

8 SECTION 10. AMENDATORY 36 O.S. 2001, Section 6619, as
9 amended by Section 4, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2004,
10 Section 6619), is amended to read as follows:

11 Section 6619. A. No person shall solicit, negotiate,
12 advertise, or effectuate service warranty contracts in this state
13 unless such person is registered as a sales representative or acts
14 under the supervision of a sales representative, or is exempt from
15 registration as provided herein. Sales representatives shall be
16 responsible for the actions of persons under their supervision.

17 B. The following persons shall be exempt from registration as
18 a sales representative:

19 a. an attorney licensed to practice law in the State of
20 Oklahoma, ~~or~~

21 b. an individual licensed under the Oklahoma Real Estate
22 License Code, Oklahoma Mortgage Broker Licensure Act,
23 or Home Inspection Licensing Act,

- 1 c. an individual licensed under the Oklahoma Insurance
2 Code as an Insurance Agent or Broker,
3 d. a service warranty association or an employee of
4 either a service warranty association or an affiliate
5 of a service warranty association,
6 e. a financial institution or an employee of a financial
7 institution, or
8 f. a dealership licensed pursuant to Chapter 62 of Title
9 47 of the Oklahoma Statutes or an employee of such a
10 dealership.

11 ~~Sales representatives shall be responsible for the actions of~~
12 ~~persons under their supervision.~~

13 SECTION 11. AMENDATORY 36 O.S. 2001, Section 6620, as
14 amended by Section 5, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2004,
15 Section 6620), is amended to read as follows:

16 Section 6620. Each service warranty association or insurer
17 shall register, on forms prescribed by the Insurance Commissioner,
18 on or before March 1 of each odd-numbered year, the name and
19 business address of each sales representative required to be
20 registered under Section 6619 of this title utilized by it in this
21 state and, within thirty (30) days after termination of the
22 contract, shall notify the Commissioner of such termination. At the
23 time of biennial registration, a filing fee of Forty Dollars

1 (\$40.00) for each sales representative shall be paid by the service
2 warranty association or insurer to the Commissioner. All such
3 filing fees shall be deposited in the State Treasury to the credit
4 of the Insurance Commissioner Revolving Fund to be used for the
5 implementation of the Service Warranty Insurance Act. Any sales
6 representative utilized subsequent to the March 1 filing date shall
7 be registered with the Commissioner within ten (10) days after such
8 utilization. ~~Pursuant to Section 6619 of this title, any individual~~
9 ~~who is an attorney licensed to practice law in the State of Oklahoma~~
10 ~~or an individual licensed under the Oklahoma Real Estate License~~
11 ~~Code, Oklahoma Mortgage Broker Licensure Act, or Home Inspection~~
12 ~~Licensing Act, shall not be subject to the registration or filing~~
13 ~~fee requirements of this section.~~ No employee or sales
14 representative of a service warranty association or insurer may
15 directly or indirectly solicit or negotiate insurance contracts, or
16 hold himself out in any manner to be an insurance agent, unless so
17 qualified and licensed pursuant to Section 1421 et seq. of Title 36
18 of the Oklahoma Statutes.

19 SECTION 12. AMENDATORY 36 O.S. 2001, Section 6622, is
20 amended to read as follows:

21 Section 6622. The Insurance Commissioner shall deny, suspend,
22 revoke, or refuse to renew or continue the registration of any sales

1 representative if it is found that any one or more of the following
2 grounds applicable to the sales representative exist:

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

5 2. The registration is willfully used to circumvent any of the
6 requirements or prohibitions of the Service Warranty Insurance Act;

7 3. Willful misrepresentation of any service warranty contract
8 or willful deception with regard to any such contract, done either
9 in person or by any form of dissemination of information or
10 advertising;

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

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

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

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

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

5 9. ~~Rebating~~ Unlawfully rebating, or attempting to unlawfully
6 rebate, or unlawfully dividing, or offering to divide, his
7 commission with another;

8 10. Willful failure to comply with, or willful violation of,
9 any proper order or rule of the Commissioner, or willful violation
10 of any provision of the Service Warranty Insurance Act; or

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

17 SECTION 13. AMENDATORY 36 O.S. 2001, Section 6626, is
18 amended to read as follows:

19 Section 6626. A. If, pursuant to procedures provided for in
20 the Service Warranty Insurance Act, it is found that one or more
21 grounds exist for the suspension, revocation, or refusal to renew or
22 continue any registration issued under the Service Warranty
23 Insurance Act, on a first offense and except when such suspension,

1 revocation, or refusal is mandatory, an order may be entered
2 imposing upon the registrant, in lieu of such suspension,
3 revocation, or refusal, an administrative penalty for each violation
4 in the amount of One Hundred Dollars (\$100.00), or in the event of
5 willful misconduct or willful violation on the part of the
6 registrant, an administrative fine not to exceed One Thousand
7 Dollars (\$1,000.00) for each violation. The administrative penalty
8 may be augmented by an amount equal to any commissions received by
9 or accruing to the credit of the registrant in connection with any
10 transaction to which the grounds for suspension, revocation, or
11 refusal are related. An administrative penalty imposed under this
12 section shall not exceed Five Thousand Dollars (\$5,000.00) in the
13 aggregate for all nonwillful violations of a similar nature or Fifty
14 Thousand Dollars (\$50,000.00) in the aggregate for all willful
15 violations of a similar nature. For purposes of this section,
16 violations shall be of a similar nature if the violation consists of
17 the same or similar course of conduct, action, or practice,
18 irrespective of the number of times the act, conduct, or practice
19 which is determined to be a violation of this act occurred.

20 B. The order may allow the registrant a reasonable period, not
21 to exceed thirty (30) days, within which to pay to the Insurance
22 Commissioner the amount of the penalty so imposed. If the
23 registrant fails to pay the penalty in its entirety to the

1 Commissioner within the period allowed, the registration of the
2 registrant shall stand suspended or revoked or renewal or
3 continuation may be refused, as the case may be, upon expiration of
4 such period and without any further proceedings.

5 SECTION 14. AMENDATORY 36 O.S. 2001, Section 6628, is
6 amended to read as follows:

7 Section 6628. ~~If a A service warranty is issued by a person or~~
8 ~~entity that is not the manufacturer of the product or a wholesale~~
9 ~~company marketing the product, shall contain a disclosure statement~~
10 ~~containing substantially the following information in ten-point or~~
11 ~~larger type shall be attached to the buyer's copy of the service~~
12 ~~warranty: "This service warranty is not issued by the manufacturer~~
13 ~~or wholesale company marketing the product. This warranty will not~~
14 ~~be honored by such manufacturer or wholesale company." No other~~
15 ~~information shall be placed on the disclosure statement: Coverage~~
16 ~~afforded under this contract is not guaranteed by the Oklahoma~~
17 ~~Insurance Guaranty Association.~~

18 SECTION 15. AMENDATORY 36 O.S. 2001, Section 6631, is
19 amended to read as follows:

20 Section 6631. A. Any person damaged by a violation of the
21 provisions of the Service Warranty Insurance Act may bring a civil
22 action against a person violating such provisions in the district
23 court of the county in which the alleged violator resides or has his

1 principal place of business or in the county in which the alleged
2 violation occurred. Upon adverse adjudication, the defendant shall
3 be liable for actual damages or Five Hundred Dollars (\$500.00)
4 whichever is greater, together with court costs and reasonable
5 attorney's fees incurred by the plaintiff. Liability under this
6 section shall not exceed Fifty Thousand Dollars (\$50,000.00) in the
7 aggregate for all violations of a similar nature. For purposes of
8 this section, violations shall be of a similar nature if the
9 violation consists of the same or similar course of conduct, action,
10 or practice, irrespective of the number of times the act, conduct,
11 or practice which is determined to be a violation of this act
12 occurred.

13 B. This section shall not be construed to authorize a civil
14 action against the Insurance Department, its employees, or the
15 Insurance Commissioner.

16 SECTION 16. REPEALER 36 O.S. 2001, Section 6606, is
17 hereby repealed.

18 SECTION 17. This act shall become effective November 1, 2005.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,
20 As Amended.