

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1963

6 By: Peterson (Ron)

7 COMMITTEE SUBSTITUTE

8 An Act relating to insurance; amending 36 O.S. 2001,  
9 Sections 6601, 6602, as last amended by Section 1,  
10 Chapter 169, O.S.L. 2004, 6604, 6605, 6607, 6614,  
11 6615, as amended by Section 2, Chapter 169, O.S.L.  
12 2004, 6616, 6617, 6619, as amended by Section 4,  
13 Chapter 409, O.S.L. 2002, 6620, as amended by Section  
14 5, Chapter 409, O.S.L. 2002, 6622, 6626, 6628 and  
15 6631 (36 O.S. Supp. 2006, Sections 6602, 6615, 6619  
16 and 6620), which relate to the Service Warranty  
17 Insurance Act; updating language; modifying  
18 definitions; increasing fee; providing for  
19 appointment of administrator; excluding certain  
20 agreement from insurance; removing bond agreement;  
21 requiring consideration in lieu of premium; providing  
22 standards for insurer; modifying amount of premium  
23 returned after cancellation; requiring consideration  
24 in lieu of premium; providing exemptions for persons  
from registration; providing reference; deleting  
reference to exemption; clarifying grounds for  
certain actions by Insurance Commissioner; limiting  
amount of administrative penalty; modifying  
disclosure statement; limiting liability; repealing  
36 O.S. 2001, Section 6606, which relates to the  
Service Warranty Insurance Act; and providing an  
effective date.

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

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

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

6 SECTION 2. AMENDATORY 36 O.S. 2001, Section 6602, as  
7 last amended by Section 1, Chapter 169, O.S.L. 2004 (36 O.S. Supp.  
8 2006, Section 6602), is amended to read as follows:

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

10 1. "Commissioner" means the Insurance Commissioner;

11 2. "Consumer product" means tangible personal property  
12 primarily used for personal, family, or household purposes;

13 3. "Department" means the Insurance Department;

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

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

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

21 7. "Indemnify" means to undertake repair or replacement of a  
22 consumer product or a newly-constructed residential structure,  
23 including any appliances, electrical, plumbing, heating, cooling or  
24 air conditioning systems, in return for the payment of a segregated

1 premium, when the consumer product or residential structure becomes  
2 defective or suffers operational failure;

3 8. "Insolvent" means any actual or threatened delinquency  
4 including, but not limited to, any one or more of the following  
5 circumstances:

6 a. an association's total liabilities exceed the total  
7 assets of the association,

8 b. the business of any such association is being  
9 conducted fraudulently, or

10 c. the association has knowingly overvalued its assets;

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

13 10. "Net assets" means the amount by which the total assets of  
14 an association, excluding goodwill, franchises, customer lists,  
15 patents or trademarks, and receivables from or advances to officers,  
16 directors, employees, salesmen, and affiliated companies, exceed the  
17 total liabilities of the association. For purposes of the Service  
18 Warranty Insurance Act, the term "total liabilities" does not  
19 include the capital stock, paid-in capital, or retained earning of  
20 an association;

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

23 12. "Premium" means the total consideration ~~received or to be~~  
24 ~~received, by whatever name called, by an insurer or service warranty~~

1 ~~association for, or related to, the issuance and delivery of a~~  
2 ~~service warranty, including any charges designated as assessments or~~  
3 ~~fees for membership, policy, survey, inspection, or service or other~~  
4 ~~charges. However, a repair charge is not a premium unless it~~  
5 ~~exceeds the usual and customary repair fee charged by the~~  
6 ~~association, provided the repair is made before the issuance and~~  
7 ~~delivery of the warranty paid to an insurer for a reimbursement~~  
8 ~~insurance policy;~~

9 13. "Sales representative" means any person utilized by an  
10 insurer or service warranty association for the purpose of selling  
11 or issuing service warranties and includes any individual possessing  
12 a certificate of competency who has the power to legally obligate  
13 the insurer or service warranty association or who merely acts as  
14 the qualifying agent to qualify the association in instances when a  
15 state statute or local ordinance requires a certificate of  
16 competency to engage in a particular business. ~~However, in the case~~  
17 ~~of service warranty associations selling service warranties from~~  
18 ~~five or more business locations, the store manager or other person~~  
19 ~~in charge of each such location shall be considered the sales~~  
20 ~~representative;~~

21 14. "Service warranty" means ~~any warranty, home warranty,~~  
22 ~~guaranty, extended warranty or extended guaranty, contract~~  
23 ~~agreement, or other written promise entered into between a consumer~~  
24 ~~and a service warranty association under the terms of which there is~~

1 ~~an undertaking to indemnify against the cost of repair or~~  
2 ~~replacement of a consumer product or newly constructed residential~~  
3 ~~structure, including any appliances, electrical, plumbing, heating,~~  
4 ~~cooling or air conditioning systems, in return for the payment of a~~  
5 ~~segregated charge by the consumer~~ a contract or agreement for a  
6 separately stated consideration for a specific duration to perform  
7 the repair or replacement of property or indemnification for repair  
8 or replacement for the operational or structural failure due to a  
9 defect in materials or workmanship, with or without additional  
10 provision for incidental payment of indemnity under limited  
11 circumstances, including, but not limited to, failure due to normal  
12 wear and tear, towing, rental and emergency road service, road  
13 hazard, power surge, and accidental damage from handling; however:

- 14       a. maintenance service contracts under the terms of which  
15           there are no provisions for such indemnification are  
16           expressly excluded from this definition,
- 17       b. those contracts issued solely by the manufacturer,  
18           distributor, importer or seller of the product, or any  
19           affiliate or subsidiary of the foregoing entities,  
20           whereby such entity has contractual liability  
21           insurance in place, from a company licensed in the  
22           state, which covers one hundred percent (100%) of the  
23           claims exposure on all contracts written without being  
24           predicated on the failure to perform under such

1 contracts, are expressly excluded from this  
2 definition,

3 c. the term "service warranty" does not include service  
4 contracts entered into between consumers and nonprofit  
5 organizations or cooperatives the members of which  
6 consist of condominium associations and condominium  
7 owners, which contracts require the performance of  
8 repairs and maintenance of appliances or maintenance  
9 of the residential property,

10 d. the term "service warranty" does not include  
11 warranties, guarantees, extended warranties, extended  
12 guarantees, contract agreements or any other service  
13 contracts issued by a company which performs at least  
14 seventy percent (70%) of the service work itself and  
15 not through subcontractors, which has been selling and  
16 honoring such contracts in Oklahoma for at least  
17 twenty (20) years, and

18 e. the term "service warranty" does not include  
19 warranties, guarantees, extended warranties, extended  
20 guarantees, contract agreements or any other service  
21 contracts, whether or not such service contracts  
22 otherwise meet the definition of "service warranty",  
23 issued by a company which has net assets in excess of  
24 One Hundred Million Dollars (\$100,000,000.00). The

1 ~~calculation of the net assets shall include the assets~~  
2 ~~of a parent company. When the net assets of the~~  
3 ~~parent company are used to calculate the total net~~  
4 ~~assets of the company, A service warranty association~~  
5 ~~may use the net assets of a parent company to qualify~~  
6 ~~under this section if the net assets of the company~~  
7 ~~issuing the policy shall total at least Twenty-five~~  
8 ~~Million Dollars (\$25,000,000.00) and the parent~~  
9 ~~company maintains net assets of at least Seventy-five~~  
10 ~~Million Dollars (\$75,000,000.00);~~

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

17 16. "Warrantor" means any service warranty association engaged  
18 in the sale of service warranties and deriving not more than fifty  
19 percent (50%) of its gross income from the sale of service  
20 warranties; and

21 17. "Warranty seller" means any service warranty association  
22 engaged in the sale of service warranties and deriving more than  
23 fifty percent (50%) of its gross income from the sale of service  
24 warranties.

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

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

6 B. A service warranty association shall pay to the Insurance  
7 Department a license fee of ~~Two Hundred Dollars (\$200.00)~~ Three  
8 Hundred Dollars (\$300.00) for such license for each year, or part  
9 thereof, the license is in force. All license fees received  
10 pursuant to this section shall be paid into the State Treasury to  
11 the credit of the Insurance Commissioner Revolving Fund and shall be  
12 used for the implementation of the Service Warranty Insurance Act.

13 C. An insurer, while authorized to transact property or  
14 casualty insurance in this state, may also transact a service  
15 warranty business without additional qualifications or licensure as  
16 required by the Service Warranty Insurance Act, but shall be  
17 otherwise subject to the provisions of the Service Warranty  
18 Insurance Act.

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

22 E. An agreement which provides specified scheduled maintenance  
23 services over a stated period of time does not constitute insurance  
24 or a service warranty.

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

3 Section 6605. The Insurance Commissioner shall not issue or  
4 renew a license to any service warranty association unless the  
5 association:

6 1. Is a solvent association;

7 2. Furnishes the Insurance Department with evidence  
8 satisfactory to it that the management of the association is  
9 competent and trustworthy and can successfully manage the affairs of  
10 the association in compliance with law;

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

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

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

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

23 Section 6607. A. An association licensed pursuant to the  
24 Service Warranty Insurance Act shall maintain a funded, unearned

1 ~~premium~~ reserve account, consisting of unencumbered assets, equal to  
2 a minimum of twenty-five percent (25%) of the gross written ~~premiums~~  
3 consideration received on all warranty contracts in force, wherever  
4 written. In the case of multiyear contracts which are offered by  
5 associations having net assets of less than Five Hundred Thousand  
6 Dollars (\$500,000.00) for which ~~premiums~~ are consideration is  
7 collected in advance for coverage in a subsequent year, one hundred  
8 percent (100%) of the ~~premiums~~ consideration for such subsequent  
9 years shall be placed in the funded, unearned ~~premium~~ reserve  
10 account. Additionally, an association establishing such reserve  
11 account shall also place in trust with the Insurance Commissioner a  
12 surety bond issued by an authorized surety having a value of not  
13 less than five percent (5%) of the gross consideration received,  
14 less claims paid, on the sale of the service warranties for all  
15 service contracts issued and in force in this state, but in no event  
16 shall the bond be less than Twenty-five Thousand Dollars  
17 (\$25,000.00).

18 B. An association shall not be required to establish an  
19 unearned ~~premium~~ reserve or demonstrate minimum net worth if it has  
20 purchased ~~contractual liability~~ an insurance policy which  
21 demonstrates to the satisfaction of the Insurance Commissioner that  
22 one hundred percent (100%) of its claim exposure is covered by such  
23 policy and satisfies the requirements of this section. The  
24 ~~contractual liability~~ insurance shall be obtained from an insurer

1 ~~that holds a certificate of authority to do business within the~~  
2 ~~state or from an insurer approved by the Commissioner as financially~~  
3 ~~capable of meeting the obligations incurred pursuant to the policy~~  
4 is licensed, registered, or otherwise authorized to do business in  
5 this state and that meets the requirements of subsection C of this  
6 section. For the purposes of this subsection, the ~~contractual~~  
7 ~~liability insurance~~ policy shall contain the following provisions:  
8       1. In the event that the service warranty association is unable  
9 to fulfill its obligation under contracts issued in this state for  
10 any reason, including insolvency, bankruptcy, or dissolution, the  
11 ~~contract liability~~ insurer will pay losses and unearned ~~premiums~~  
12 consideration under such plans directly to the person making a claim  
13 under the contract;  
14       2. The insurer issuing the ~~contractual liability insurance~~  
15 policy shall assume full responsibility for the administration of  
16 claims in the event of the inability of the association to do so;  
17 and  
18       3. The policy may not be canceled or not renewed by either the  
19 insurer or the association unless sixty (60) days' written notice  
20 thereof has been given to the Commissioner by the insurer before the  
21 date of such cancellation or nonrenewal.  
22       C. The insurer providing the insurance policy used to satisfy  
23 the financial responsibility requirements of subsection B of this  
24 section must meet one of the following standards:

1       1. 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 at least Fifteen Million Dollars  
5           (\$15,000,000.00), and

6           b. annually file copies of the audited financial  
7           statements of the insurer, its NAIC Annual Statement,  
8           and the actuarial certification required by and filed  
9           in the state of domicile of the insurer; or

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

12           a. maintain surplus as to policyholders and paid-in  
13           capital of less than Fifteen Million Dollars  
14           (\$15,000,000.00) but at least equal to Ten Million  
15           Dollars (\$10,000,000.00),

16           b. demonstrate to the satisfaction of the Commissioner  
17           that the company maintains a ratio of net written  
18           premiums, wherever written, to surplus as to  
19           policyholders and paid-in capital of not greater than  
20           three to one, and

21           c. annually file copies of the audited financial  
22           statements of the insurer, its NAIC Annual Statement,  
23           and the actuarial certification required by and filed  
24           in the state of domicile of the insurer.

1        D. No warrantor or warranty seller shall allow its gross  
2 written ~~premiums~~ consideration to exceed seven to one ratio to net  
3 assets.

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

6        E. If the gross written ~~premiums~~ consideration of a warrantor  
7 or a warranty seller ~~exceed~~ exceeds the required net asset ratios,  
8 the Commissioner may require, in addition to other measures as the  
9 Commissioner deems necessary, any one or more of the following:

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

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

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

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

24

1 C. Each service warranty contract shall contain a cancellation  
2 provision. In the event the contract is canceled by the warranty  
3 holder, return of ~~premium~~ consideration shall be based upon ninety  
4 percent (90%) of the unearned pro rata ~~premium~~ consideration less  
5 the actual cost of any service provided under the service warranty  
6 contract. In the event the contract is canceled by the association,  
7 return of ~~premium~~ consideration shall be based upon one hundred  
8 percent (100%) of unearned pro rata ~~premium~~ consideration less the  
9 actual cost of any service provided under the service warranty  
10 contract.

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

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

17 SECTION 7. AMENDATORY 36 O.S. 2001, Section 6615, as  
18 amended by Section 2, Chapter 169, O.S.L. 2004 (36 O.S. Supp. 2006,  
19 Section 6615), is amended to read as follows:

20 Section 6615. A. In addition to the license fees provided in  
21 the Service Warranty Insurance Act for service warranty associations  
22 each such association and insurer shall, annually on or before the  
23 last day of ~~February~~ April, file with the Insurance Commissioner its  
24 annual statement in the form prescribed by the Commissioner showing

1 ~~all premiums~~ gross written consideration or assessments received by  
2 it in connection with the issuance of service warranties in this  
3 state during the preceding calendar year and other relevant  
4 financial information as deemed necessary by the Commissioner, using  
5 accounting principles which will enable the Commissioner to  
6 ascertain whether the financial requirements set forth in Section  
7 6607 of this title have been satisfied.

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

12 C. In addition to an annual statement, the Commissioner may  
13 require of licensees, under oath and in the form prescribed by it,  
14 quarterly statements or special reports which the Commissioner deems  
15 necessary for the proper supervision of licensees under the Service  
16 Warranty Insurance Act.

17 D. ~~Premiums~~ Consideration and assessments received by  
18 associations and insurers for service warranties shall not be  
19 subject to the premium tax provided for in Section 624 of this  
20 title, but shall be subject to an administrative fee of Two Dollars  
21 (\$2.00) for each service warranty issued that provides coverage not  
22 to exceed Seventy-five Dollars (\$75.00), Five Dollars (\$5.00) for  
23 each service warranty issued that provides coverage in excess of  
24 Seventy-five Dollars (\$75.00) but not to exceed Two Hundred Fifty

1 Dollars (\$250.00), and Ten Dollars (\$10.00) for each service  
2 warranty that provides coverage in excess of Two Hundred Fifty  
3 Dollars (\$250.00). However, associations and insurers that have  
4 contractual liability insurance in place, from ~~a company licensed or~~  
5 ~~registered to issue automobile service warranties in the state, an~~  
6 insurer which satisfies the requirements of subsection C of Section  
7 6607 of this title and which covers one hundred percent (100%) of  
8 the claims exposure of the association or insurer on all contracts  
9 written without being predicated on the failure to perform under  
10 such contracts shall be subject to an annual administrative fee of  
11 Two Thousand Five Hundred Dollars (\$2,500.00). Said fees shall be  
12 paid quarterly to the Insurance Commissioner. All such fees, up to  
13 a maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00)  
14 per year, received by the Insurance Commissioner shall be deposited  
15 into the State Treasury to the credit of the Insurance Commissioner  
16 Revolving Fund for the payment of costs incurred by the Insurance  
17 Department in the administration of the Service Warranty Insurance  
18 Act. Amounts received in excess of the annual limitation shall be  
19 deposited to the credit of the General Revenue Fund.

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

22 Section 6616. A. Service warranty associations licensed  
23 pursuant to the Service Warranty Insurance Act are subject to  
24 periodic examination by the Insurance Commissioner, in the same

1 manner and subject to the same terms and conditions that apply to  
2 insurers.

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

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

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

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

21 2. A detailed warranty register of warranties in force, ~~by~~  
22 ~~unique identifier~~. The register shall include the ~~unique~~  
23 ~~identifier~~, date of issue, issuing sales representative, ~~name of~~  
24 ~~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. 2006,  
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,

24

- 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 Sections 561 through  
9        595 of Title 47 of the Oklahoma Statutes or an  
10       employee of such a 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. 2006,  
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  
24       (\$40.00) for each sales representative shall be paid by the service

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

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

20 Section 6622. The Insurance Commissioner shall deny, suspend,  
21 revoke, or refuse to renew or continue the registration of any sales  
22 representative if it is found that any one or more of the following  
23 grounds applicable to the sales representative exist:  
24

- 1        1. Material misstatement, misrepresentation, or fraud in  
2 registration;
- 3        2. The registration is willfully used to circumvent any of the  
4 requirements or prohibitions of the Service Warranty Insurance Act;
- 5        3. Willful misrepresentation of any service warranty contract  
6 or willful deception with regard to any such contract, done either  
7 in person or by any form of dissemination of information or  
8 advertising;
- 9        4. In the adjustment of claims arising out of warranties,  
10 material misrepresentation to a service warranty holder or other  
11 interested party of the terms and coverage of a contract with the  
12 intent and for the purpose of effecting settlement of such claim on  
13 less favorable terms than those provided in and contemplated by the  
14 contract;
- 15        5. Demonstrated lack of fitness or trustworthiness to engage in  
16 the business of service warranty;
- 17        6. Demonstrated lack of adequate knowledge and technical  
18 competence to engage in the transactions authorized by the  
19 registration;
- 20        7. Fraudulent or dishonest practices in the conduct of business  
21 under the registration;
- 22        8. Misappropriation, conversion, or unlawful withholding of  
23 moneys belonging to an association, insurer, or warranty holder, or  
24

1 to others, and received in the conduct of business under the  
2 registration;

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

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

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

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

17 Section 6626. A. If, pursuant to procedures provided for in  
18 the Service Warranty Insurance Act, it is found that one or more  
19 grounds exist for the suspension, revocation, or refusal to renew or  
20 continue any registration issued under the Service Warranty  
21 Insurance Act, on a first offense and except when such suspension,  
22 revocation, or refusal is mandatory, an order may be entered  
23 imposing upon the registrant, in lieu of such suspension,  
24 revocation, or refusal, an administrative penalty for each violation

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

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

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

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

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

16 Section 6631. A. Any person damaged by a violation of the  
17 provisions of the Service Warranty Insurance Act may bring a civil  
18 action against a person violating such provisions in the district  
19 court of the county in which the alleged violator resides or has his  
20 principal place of business or in the county in which the alleged  
21 violation occurred. Upon adverse adjudication, the defendant shall  
22 be liable for actual damages or Five Hundred Dollars (\$500.00)  
23 whichever is greater, together with court costs and reasonable  
24 attorney's fees incurred by the plaintiff. Liability under this

1 section shall not exceed Fifty Thousand Dollars (\$50,000.00) in the  
2 aggregate for all violations of a similar nature. For purposes of  
3 this section, violations shall be of a similar nature if the  
4 violation consists of the same or similar course of conduct, action,  
5 or practice, irrespective of the number of times the act, conduct,  
6 or practice which is determined to be a violation of the Service  
7 Warranty Insurance Act occurred.

8 B. This section shall not be construed to authorize a civil  
9 action against the Insurance Department, its employees, or the  
10 Insurance Commissioner.

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

13 SECTION 17. This act shall become effective November 1, 2007.

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