

ENROLLED SENATE
BILL NO. 1428

By: Sparks of the Senate

and

Peterson (Ron) of the House

An Act relating to insurance and contracts; amending 36 O.S. 2001, Section 1922, as amended by Section 17 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, which relates to the Uniform Insurers Liquidation Act; requiring certain consent regarding a transfer of rights to payment; allowing a liquidator to petition for binding arbitration under certain circumstances; requiring certain arbitration to be conducted in the State of Oklahoma; creating the Vehicle Protection Product Act; providing short title; providing definitions; specifying compliance with the Vehicle Protection Product Act; requiring annual registration of warrantors; specifying information to be contained in registration records; authorizing fee; providing exception to registration as a warrantor; providing financial responsibility requirements; setting forth requirements to be contained in the warranty reimbursement insurance policy; specifying requirements contained in a vehicle protection product warranty; prohibiting a warrantor from using certain words to describe its product or business; requiring certain records to be kept and providing procedures related thereto; allowing the Insurance Commissioner to conduct certain examinations and to take certain actions to enforce the Vehicle Protection Product Act; authorizing the promulgation of rules; specifying applicability of the Vehicle Protection Product Act; amending Section 1 of Enrolled House Bill No. 3278 of the 2nd Session of the 51st Oklahoma Legislature, which relates to a debt cancellation agreement; specifying that certain

debt cancellation agreements shall not be considered a contract for insurance; amending 36 O.S. 2001, Sections 6601, 6602, as last amended by Section 26 of Enrolled Senate Bill 2122 of the 2nd Session of the 51st Oklahoma Legislature, 6604, 6605, 6607, 6614, 6615, as last amended by Section 28 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, 6617, 6620, as amended by Section 5, Chapter 409, O.S.L. 2002, 6622, 6626 and 6628 (36 O.S. Supp. 2007, Section 6620), which relate to the Service Warranty Insurance Act; updating language; modifying definitions; increasing fee; requiring certain registration; requiring information to be provided on the registration application; providing for business entity registration fee; specifying use of such fee; providing for certain appointment; excluding certain agreement from insurance; removing certain deposit requirement; requiring certain bond; providing standards for insurer; modifying amount of premium returned after cancellation; increasing certain administrative fee; modifying certain information maintained by a licensed service warranty association; providing reference; deleting reference to exemption; clarifying grounds for certain actions by Insurance Commissioner; limiting amount of administrative penalty; modifying disclosure statement; repealing 36 O.S. 2001, Section 6602, as last amended by Section 16 of this act, which relates to definitions; repealing 36 O.S. 2001, Section 6606, which relates to deposit of securities by a service warranty association; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 1922, as amended by Section 17 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, is amended to read as follows:

Section 1922. A. The receiver shall have the power:

1. To hold hearings, to subpoena witnesses for the purpose of compelling their attendance, to administer oaths, to examine any person under oath, and to compel any persons to subscribe to their testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, data or other documents, electronic or paper, that the receiver deems relevant to the inquiry;

2. To audit the books and records of all agents of the insurer, including, but not limited to, third-party administrators, and affiliated and nonaffiliated management companies insofar as those records relate to the business activities of the insurer;

3. To conduct litigation, including:

- a. to continue to prosecute or defend, and to institute in the name of the insurer or in the receiver's own name, suits or other legal proceedings, in this state or elsewhere,
- b. to abandon the prosecution of claims the receiver deems unprofitable to pursue further,
- c. to collect all debts and monies due and claims belonging to the insurer, wherever located, and in furtherance of this purpose to institute action in this or other jurisdictions in order to forestall garnishment and attachment proceedings against those debts, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the receiver deems consistent with the purpose of the Uniform Insurers Liquidation Act, and pursue any creditor's remedies available to enforce the insurer's claims,
- d. to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition for supervision, conservation, receivership,

rehabilitation or liquidation has been filed shall not bind the receiver. Whenever a guaranty association has an obligation to defend any suit, the receiver shall defer to that obligation and may defend only in cooperation with the guaranty association or in the absence of the guaranty association's defense,

- e. to exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer, transaction or lien that may be avoidable under the Uniform Insurers Liquidation Act or otherwise, and
- f. to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the insurer or any of its property, and to act as the receiver or trustee whenever the appointment is offered.

The receiver shall have exclusive standing in any action that may exist to assert claims or defenses on behalf of the creditors, members, policyholders or shareholders of the insurer or the public against any person, except to the extent that a claim is personal to a specific creditor, member, policyholder or shareholder and recovery on the claim would not inure to the benefit of the estate. If the receiver sells or dissolves the corporate entity or charter of the insurer, the receiver shall have the power to apply to any court in this state or elsewhere for leave to substitute the receiver for the insurer as a party. This paragraph does not infringe or impair any of the rights provided to a guaranty association pursuant to its enabling statute or otherwise;

- 4. a. To conduct public or private sales of the insurer's property, and thereby to acquire, hypothecate, encumber, lease, sell, improve, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, and to settle or resolve any claim or lawsuit brought by the receiver on behalf of the insurer or pending when a petition for supervision, conservation, receivership, rehabilitation or liquidation is filed, or commute or

settle any claim of reinsurance under any contract of reinsurance,

- b. to transfer either proceeds of or rights to payment under ceding reinsurance agreements covering policies to a third-party transferee. The A transfer of rights to payment shall only be made with the consent of the reinsurer and in conjunction with the transfer to such person of all rights and obligations relating to the transferred ceding reinsurance agreement and of all property, including any guarantees or other credit enhancement, securing any claims of each party under each reinsurance agreement. The consent of a reinsurer under this subparagraph shall not be unreasonably withheld. If the receiver believes that the consent of a reinsurer was unreasonably withheld, the receiver may petition the receivership court to order binding arbitration. The arbitration shall be conducted in accordance with the arbitration procedures in the reinsurance contract, or if no such provisions exist, in accordance with the procedures of the American Arbitration Association. A transferee under this subparagraph shall have the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim. The transfer of these rights shall not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether the agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Except as provided in this subparagraph, any transfer of rights pursuant to this provision shall not impair any rights or defenses of the reinsurer that existed prior to the transfer or would have existed in the absence of the transfer. Except as otherwise provided in this subparagraph, any transfer of rights pursuant to this provision shall not relieve the transferee or the receiver from obligations owed to the reinsurer pursuant to the reinsurance or other agreement, and

- c. to execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation or rehabilitation and to file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;
- 5.
- a. To use property of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 1927.1 of this title,
 - b. to use property of the estate to transfer the insurer's obligations under surety bonds and surety undertakings, and collateral held by the insurer with respect to the reimbursement obligations of the principals under those surety bonds and surety undertakings, to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 1927.1 of this title; and if the receivership court so orders, the estate shall have no further liability under the transferred policies, surety bonds, or surety undertakings after the transfer is made, and
 - c. upon the issuance of an order of liquidation and a finding of insolvency, policies or portions of policies of life, disability income, long-term care or health insurance or annuities covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy, including any terms restructured pursuant to a court-approved rehabilitation plan, to the extent necessary to permit the guaranty associations to discharge their statutory obligations. Policies or portions of policies of life, disability income, long-term care or health insurance or annuities, not covered by one or more guaranty associations, and other types of

policies, shall terminate by operation of law, except to the extent the ~~liquidator~~ receiver proposes and the receivership court approves the use of property of the estate, consistent with subparagraphs a and b of this paragraph, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer;

6. To borrow money on the security of the property of the estate or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation or rehabilitation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution in Section 1927.1 of this title;

7. To enter into contracts, and to assume or reject any executory contract or unexpired lease to which the insurer is a party; provided, however, ~~notwithstanding anything which may appear to the contrary in this act, any statute of this state or of any other state, or of the United States, if the receiver shall not be~~ is bound by any provision of any contract of or by the insurer which requires arbitration, such arbitration shall be conducted in the State of Oklahoma;

8. To take possession of the records and property of the insurer. Guaranty associations shall have reasonable access to the records of the insurer necessary for them to carry out their statutory obligations;

9. To deposit in one or more banks in this state sums required for meeting current administration expenses and dividend distributions;

10. To invest the assets of the estate;

11. To enter into agreements with any receivers or commissioners of any other states; and

12. To exercise all powers now held or hereafter conferred upon receivers by the applicable statutory and common law of this state

not inconsistent with the provisions of the Uniform Insurers Liquidation Act.

B. The receiver is vested with all the rights of the entity or entities in receivership.

C. The enumeration, in this section, of the powers and authority of the receiver shall not be construed as a limitation upon the receiver, nor shall it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation or rehabilitation.

D. The receiver shall not be obligated to defend any action against the insurer or insured. An insured not defended by a guaranty association may provide his or her own defense, and include the cost of the defense as part of any claim of the insured against the estate, if the defense was an obligation of the insurer. The right of the receiver to contest coverage on a particular claim shall be deemed preserved without the necessity of an express reservation of rights.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6650 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 13 of this act shall be known and may be cited as the "Vehicle Protection Product Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6651 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Vehicle Protection Product Act:

1. "Administrator" means a third party other than the warrantor who is designated by the warrantor to be responsible for the administration of vehicle protection product warranties;

2. "Commissioner" means the Insurance Commissioner;

3. "Department" means the Insurance Department;

4. "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, vehicle excise taxes, vehicle registration fees, certificate of title fees, transaction fees and mechanical inspection fees;

5. "Service contract" means a contract or agreement as defined under the Service Warranty Insurance Act in Sections 6601 through 6639 of Title 36 of the Oklahoma Statutes;

6. "Vehicle protection product" means a vehicle protection device, system, or service that:

- a. is installed on or applied to a vehicle,
- b. is designed to prevent loss or damage to a vehicle from a specific cause, and
- c. includes a written warranty.

For purposes of this section, the term vehicle protection product shall include alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio and satellite tracking devices;

7. "Vehicle protection product warranty" or "warranty" means a written agreement by a warrantor that provides if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, that the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty;

8. "Vehicle protection product warrantor" or "warrantor" means a person who is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty agreement.

Warrantor does not include an authorized insurer providing a warranty reimbursement insurance policy;

9. "Warranty holder" means a person who purchases a vehicle protection product or who is a permitted transferee; and

10. "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties issued by the warrantor.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6652 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No vehicle protection product may be sold or offered for sale in this state unless the seller, warrantor, and administrator, if any, comply with the provisions of the Vehicle Protection Product Act.

B. Vehicle protection product warrantors and related vehicle protection product sellers and warranty administrators complying with the Vehicle Protection Product Act are not required to comply with and are not subject to any other provisions of the Insurance Code.

C. Service contract providers who do not sell vehicle protection products are not subject to the requirements of the Vehicle Protection Product Act and sales of the vehicle protection products are exempt from the requirements of the Service Warranty Insurance Act.

D. Warranties, indemnity agreements, and guarantees that are not provided as a part of a vehicle protection product are not subject to the provisions of the Vehicle Protection Product Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6653 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the Insurance Department on a form prescribed by the Insurance Commissioner.

B. Warrantor registration records shall be filed annually and shall be updated within thirty (30) days of any change. The registration records shall contain the following information:

1. The warrantor's name, any fictitious names under which the warrantor does business in the state, principal office address, and telephone number;

2. The name and address of the warrantor's agent for service of process in the state if other than the warrantor;

3. The names of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;

4. The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this state;

5. A copy of the warranty reimbursement insurance policy or policies or other financial information required by Section 6 of this act;

6. A copy of each warranty the warrantor proposes to use in this state; and

7. A statement indicating under which provision of Section 6 of this act the warrantor qualified to do business in this state as a warrantor.

C. The Commissioner may charge each registrant a reasonable fee to offer the cost of processing the registration and maintaining the records in an amount to be set by rule. The information in paragraphs 1 and 2 of subsection B of this section shall be made available to the public.

D. If a registrant fails to register by the renewal deadline, the Commissioner shall give the registrant written notice of the failure and the registrant will have thirty (30) days to complete the renewal of registration before the registrant is suspended from being registered in this state.

E. An administrator or person who sells or solicits a sale of a vehicle protection product but who is not a warrantor shall not be required to register as a warrantor or be licensed under the insurance laws of this state to sell vehicle protection products.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6654 of Title 36, unless there is created a duplication in numbering, reads as follows:

No vehicle protection product shall be sold or offered for sale in this state unless the warrantor meets the conditions specified in either paragraph 1 or 2 of this section in order to ensure adequate performance under the warranty. No other financial security requirements or financial standards for warrantors shall be required.

1. The vehicle protection product warrantor is insured under a warranty reimbursement policy issued by an insurer authorized to do business in this state which provides that:

- a. the insurer will pay to, or on behalf of, the warrantor one hundred percent (100%) of all sums that the warrantor is legally obligated to pay according to the warrantor's contractual obligations under the warrantor's vehicle protection product warranty,
- b. a true and correct copy of the warranty reimbursement insurance policy has been filed with the Insurance Commissioner by the warrantor, and
- c. the policy contains the provision required in Section 7 of this act.

2. a. The vehicle protection product warrantor, or its parent company in accordance with subparagraph b of

this paragraph, maintains a net worth or stockholders' equity of Fifty Million Dollars (\$50,000,000.00), and

- b. the warrantor provides the Commissioner with a copy of the warrantor's or the warrantor's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year or, if the warrantor does not file with the Securities and Exchange Commission, a copy of the warrantor or the warrantor's parent company's audited financial statements that shows a net worth of the warrantor or its parent company of at least Fifty Million Dollars (\$50,000,000.00). If the warrantor's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the warrantor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the warrantor relating to warranties issued by the warrantor in this state. The financial information filed under this subparagraph shall be confidential as a trade secret of the entity filing the information and not subject to public disclosure.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6655 of Title 36, unless there is created a duplication in numbering, reads as follows:

No warranty reimbursement insurance policy shall be issued, sold, or offered for sale in this state unless the policy meets the conditions set forth in this section and the Insurance Commissioner has not disapproved the policy.

1. The policy states that the issuer of the policy shall reimburse or pay on behalf of the vehicle protection product warrantor all covered sums which the warrantor is legally obligated to pay or shall provide all service that the warrantor is legally obligated to perform according to the warrantor's contractual obligations under the provisions of the insured warranties issued by the warrantor.

2. The policy states that in the event payment due under the terms of the warranty is not provided by the warrantor within sixty

(60) days after proof of loss has been filed according to the terms of the warranty by the warranty holder, the warranty holder may file directly with the warranty reimbursement insurance company for reimbursement.

3. The policy provides that a warranty reimbursement insurance company that insures a warranty shall be deemed to have received payment of the premium if the warranty holder paid for the vehicle protection product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer.

4. The policy has the following provisions regarding cancellation of the policy:

- a. the issuer of a reimbursement insurance policy shall not cancel such policy until a notice of cancellation in writing has been mailed or delivered to the Insurance Commissioner and each insured warrantor,
- b. the cancellation of a reimbursement insurance policy shall not reduce the issuer's responsibility for vehicle protection products sold prior to the date of cancellation, and
- c. in the event an insurer cancels a policy that a warrantor has filed with the Commissioner, the warrantor shall do either of the following:
 - (1) file a copy of a new policy with the Commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy, and
 - (2) discontinue offering warranties as of the termination date of the policy until a new policy becomes effective and is accepted by the Commissioner.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6656 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any vehicle protection product shall not be sold or offered for sale in this state unless the warranty:

1. States, "The obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy", if the warrantor elects to meet its financial responsibility obligations under paragraph 1 of Section 6 of this act, or states, "The obligations of the warrantor under this warranty are backed by the full faith and credit of the warrantor", if the warrantor elects to meet its financial responsibility obligations under paragraph 2 of Section 6 of this act;

2. States that in the event a warranty holder must make a claim against a party other than the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within sixty (60) days after proof of loss has been filed with the warrantor, if the warrantor elects to meet its financial responsibility obligations under paragraph 1 of Section 6 of this act;

3. States the name and address of the issuer of the warranty reimbursement insurance policy, and this information need not be preprinted on the warranty form, but may be added to or stamped on the warranty, if the warrantor elects to meet its financial responsibility obligations under paragraph 1 of Section 6 of this act;

4. Identifies the warrantor, the seller, and the warranty holder;

5. Sets forth the total product purchase price and the terms under which it is to be paid; however, the purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale;

6. Sets forth the procedure for making a claim, including a telephone number;

7. Specifies the payments or performance to be provided under the warranty including payments for incidental costs, the manner of calculation or determination of payments or performance, and any limitations, exceptions or exclusions;

8. Sets forth all of the obligations and duties of the warranty holder, such as the duty to protect against any further damage to the vehicle, the obligation to notify the warrantor in advance of any repair, or other similar requirements, if any;

9. Sets forth any terms, restrictions, or conditions governing transferability and cancellation of the warranty, if any; and

10. Contains a disclosure that reads substantially as follows: "This agreement is a product warranty and is not insurance."

B. Incidental costs may be reimbursed under the provisions of the warranty in either a fixed amount specified in the warranty or sales agreement or by the use of a formula itemizing specific incidental costs incurred by the warranty holder.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6657 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Unless licensed as an insurance company, a vehicle protection product warrantor shall not use in its name, contracts, or literature, any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other vehicle protection product warrantor. A warrantor may use the term "guaranty" or similar word in the warrantor's name.

B. A vehicle protection product seller or warrantor may not require as a condition of financing that a retail purchaser of a motor vehicle purchase a vehicle protection product.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6658 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All vehicle protection product warrantors shall keep accurate accounts, books, and records concerning transactions regulated under the Vehicle Protection Product Act.

B. A vehicle protection product warrantor's accounts, books, and records shall include:

1. Copies of all vehicle protection product warranties;
2. The name and address of each warranty holder; and
3. The dates, amounts, and descriptions of all receipts, claims, and expenditures.

C. A vehicle protection product warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least three (3) years after the specified period of coverage has expired. A warrantor discontinuing business in this state shall maintain its records until it furnishes the Insurance Commissioner satisfactory proof that the warrantor has discharged all obligations to warranty holders in this state.

D. Vehicle protection product warrantors shall make all accounts, books, and records concerning transactions regulated under the Vehicle Protection Product Act available to the Commissioner for examination.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6659 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may conduct examinations of warrantors, administrators, or other persons to enforce the Vehicle Protection Product Act and protect warranty holders in this state. Upon request of the Commissioner, a warrantor shall make available for the Commissioner all accounts, books, and records concerning vehicle protection products sold by the warrantor that are necessary to enable the Commissioner to reasonably determine compliance or noncompliance with the Vehicle Protection Product Act. The examination shall be conducted pursuant to Sections 309.1 through 309.7 of Title 36 of the Oklahoma Statutes.

B. The Commissioner may take action that is necessary or appropriate to enforce the provisions of the Vehicle Protection Product Act and the Commissioner's rules and orders and to protect warranty holders in this state. If a warrantor engages in a pattern or practice of conduct that violates the Vehicle Protection Product Act and that the Commissioner reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person or company located in this state, the Commissioner may:

1. Issue an order directed to that warrantor to cease and desist from engaging in further acts, practices, or transactions that are causing the conduct;

2. Issue an order prohibiting that warrantor from selling or offering for sale vehicle protection products in violation of the Vehicle Protection Product Act;

3. Issue an order imposing a civil penalty on that warrantor;
or

4. Issue any combination of the foregoing, as applicable.

C. Prior to the effective date of any order issued pursuant to this section, the Commissioner must provide written notice of the order to the warrantor and the opportunity for a hearing to be set within ten (10) business days after receipt of the notice, except prior notice and hearing shall not be required if the Commissioner reasonably believes that the warrantor has become, or is about to become, insolvent.

D. A person aggrieved by an order issued under this section may request a hearing before the Commissioner. The hearing request shall be filed with the Commissioner within twenty (20) days after the date the Commissioner's order is effective, and the Commissioner must set such a hearing within fifteen (15) days after the receipt of the hearing request.

E. At the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this section is justified. The provisions of the Administrative Procedures Act shall apply to a hearing request under this section.

F. The Commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of the Vehicle Protection Product Act or of the Commissioner's orders or rules. An action filed under this section also may seek restitution on behalf of persons aggrieved by a violation of the Vehicle Protection Product Act or orders or rules of the Commissioner.

G. A person who is found to have violated provisions of the Vehicle Protection Product Act or orders or rules of the Commissioner may be ordered to pay to the Commissioner a civil penalty in an amount, determined by the Commissioner, of not more than Five Hundred Dollars (\$500.00) per violation and not more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct, action, or practice that is determined to be a violation of the Vehicle Protection Product Act occurred.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6660 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner may promulgate rules consistent with the provisions of the Vehicle Protection Product Act as are necessary to implement them. Such rules shall include disclosures for the benefit of the warranty holder, record-keeping, and procedures for public complaints. These rules may also include the conditions under which surplus lines insurers may be rejected for the purpose of underwriting vehicle protection product warranty agreements.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6661 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Vehicle Protection Product Act applies to all vehicle protection products sold or offered for sale on or after the effective date of this act. The failure of any person to comply with the Vehicle Protection Product Act prior to its effective date

shall not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not otherwise be used to prove that the action of any person or the affected vehicle protection product was unlawful or otherwise improper. The adoption of the Vehicle Protection Product Act does not imply that a vehicle protection product warranty was insurance prior to the effective date of this act. Nothing in this section shall be construed to require the application of the penalty provisions where this section is not applicable.

SECTION 14. AMENDATORY Section 1 of Enrolled House Bill No. 3278 of the 2nd Session of the 51st Oklahoma Legislature, is amended to read as follows:

Section 1. A. A "debt cancellation agreement" means a loan term or contractual arrangement modifying loan or retail installment contract terms under which a lender or other creditor agrees to cancel all or part of an obligation of the borrower to repay an extension of credit from the lender or other creditor upon the occurrence of a specified event. The agreement may be separate from or a part of other loan or retail installment contract documents.

B. A debt cancellation agreement shall not be considered a contract of, or for, insurance if it is not a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies, but merely cancels amounts owed by a borrower under a loan, retail installment contract or other credit agreement.

SECTION 15. AMENDATORY 36 O.S. 2001, Section 6601, is amended to read as follows:

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

SECTION 16. AMENDATORY 36 O.S. 2001, Section 6602, as last amended by Section 26 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, 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;
4. "Gross income" means the total amount of revenue received in connection with business-related activity;
5. "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;
6. "Impaired" means having liabilities in excess of assets;
7. "Indemnify" means to undertake repair or replacement of a consumer product or a newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated premium, when the consumer product or residential structure becomes defective or suffers operational failure;
8. "Insolvent" means any actual or threatened delinquency including, but not limited to, any one or more of the following circumstances:
 - a. an association's total liabilities exceed the association's total assets excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. In order to include receivables from affiliated companies as assets as defined pursuant to this subparagraph and paragraph 10 of this section, the service warranty association shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies. The written guarantee must be made by a guaranteeing organization which:

- (1) has been in continuous operation for ten (10) years or more and has net assets in excess of ~~Fifty Million Dollars (\$50,000,000.00)~~ Five Hundred Million Dollars (\$500,000,000.00),
- (2) submits a guarantee on a form provided by the Insurance Commissioner by rule that contains a provision which requires that the guarantee be irrevocable and ~~contains a provision setting out that the Commissioner may pursue appropriate legal actions in the courts of this state or any other state against the guaranteeing company to collect the receivable on behalf of the service warranty association in the event of the insolvency or threatened insolvency of the association,~~ unless the guaranteeing organization can demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,
- (3) initially submits a statement from ~~an independent~~ a certified public accountant of the guaranteeing agency organization attesting that the net assets of the guaranteeing ~~company~~ organization meets or exceeds the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and
- (4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, a statement from an independent certified public accountant of the guaranteeing ~~agency~~ organization attesting that the net assets of the guaranteeing ~~company~~ organization meet or exceed

the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and

~~(5) the receivables are maintained as cash or as securities described in Sections 1607, 1608, 1610 and 1620 of this title,~~

- b. the business of any such association is being conducted fraudulently, or
- c. the association has knowingly overvalued its assets;

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

10. "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 the Service Warranty Insurance Act, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earnings of an association unless a written guaranty assures repayment and meets the conditions specified in subparagraph a of paragraph 8 of this section;

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

12. "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;

13. "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;

14. "Service warranty" means any warranty, home warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise entered into between a consumer and a service warranty association under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product or newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, 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 are expressly excluded from this definition,
- b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from an insurer licensed in the state, which covers one hundred percent (100%) of the claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,
- c. 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,

- d. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which performs at least seventy percent (70%) of the service work itself and not through subcontractors, which has been selling and honoring such contracts in Oklahoma for at least twenty (20) years, and
- e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00). The calculation of the net assets shall include the assets of a parent company. When the net assets of the parent company are used to calculate the total net assets of the company, the net assets of the company issuing the policy shall total at least Twenty-five Million Dollars (\$25,000,000.00);

15. "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties; provided, this term shall not mean any person engaged in the business of erecting or otherwise constructing a new home;

16. "Warrantor" means any service warranty association 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

17. "Warranty seller" means any service warranty association 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 17. AMENDATORY 36 O.S. 2001, Section 6602, as last amended by Section 26 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, 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;
4. "Gross income" means the total amount of revenue received in connection with business-related activity;
5. "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;
6. "Impaired" means having liabilities in excess of assets;
7. "Indemnify" means to undertake repair or replacement of a consumer product or a newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated premium, when the consumer product or residential structure becomes defective or suffers operational failure;
8. "Insolvent" means any actual or threatened delinquency including, but not limited to, any one or more of the following circumstances:
 - a. an association's total liabilities exceed the association's total assets excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. In order to include receivables from affiliated companies as assets as defined pursuant to this subparagraph and paragraph 10 of this section, the service warranty

association shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies. The written guarantee must be made by a guaranteeing organization which:

- (1) has been in continuous operation for ten (10) years or more and has net assets in excess of ~~Fifty Million Dollars (\$50,000,000.00)~~ Five Hundred Million Dollars (\$500,000,000.00),
- (2) submits a guarantee on a form provided by the Insurance Commissioner by rule that contains a provision which requires that the guarantee be irrevocable and ~~contains a provision setting out that the Commissioner may pursue appropriate legal actions in the courts of this state or any other state against the guaranteeing company to collect the receivable on behalf of the service warranty association in the event of the insolvency or threatened insolvency of the association,~~ unless the guaranteeing organization can demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,
- (3) initially submits a statement from ~~an independent~~ a certified public accountant of the guaranteeing agency organization attesting that the net assets of the guaranteeing ~~company~~ organization meets or exceeds the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and

(4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, a statement from an independent certified public accountant of the ~~guaranteeing agency~~ organization attesting that the net assets of the ~~guaranteeing company~~ organization meet or exceed the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and

~~(5) the receivables are maintained as cash or as securities described in Sections 1607, 1608, 1610 and 1620 of this title,~~

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

c. the association has knowingly overvalued its assets;

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

10. "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 the Service Warranty Insurance Act, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earning of an association unless a written guaranty assures repayment and meets the conditions specified in subparagraph a of paragraph 8 of this section;

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

12. "Premium" means the total consideration received or to be received, by whatever name called, by ~~an insurer or a~~ a 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;

13. "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;~~

14. "Service warranty" means ~~any warranty, home warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise entered into between a consumer and a service warranty association under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product or newly constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated charge by the consumer~~ a contract or agreement for a separately stated consideration for a specific duration to perform the repair or replacement of property or indemnification for repair or replacement for the operational or structural failure due to a defect or failure in materials or workmanship, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, failure due to normal wear and tear, towing, rental and emergency road service, road hazard, power surge, and accidental damage from handling or as otherwise provided for in said contract or agreement; however:

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

- b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from an insurer licensed in the state, which covers one hundred percent (100%) of the claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,
- c. 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,
- d. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which performs at least seventy percent (70%) of the service work itself and not through subcontractors, which has been selling and honoring such contracts in Oklahoma for at least twenty (20) years, and
- e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts, whether or not such service contracts otherwise meet the definition of service warranty, issued by a company which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00). The calculation of the net assets shall include the assets of a parent company. When the net assets of the parent company are used to calculate the total net assets of the company, A service warranty association may use the net assets of a parent company to qualify under this section if the net assets of the company

issuing the policy shall total at least Twenty-five Million Dollars (\$25,000,000.00) and the parent company maintains net assets of at least Seventy-five Million Dollars (\$75,000,000.00) not including the net assets held by the service warranty associations;

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

16. "Warrantor" means any service warranty association 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

17. "Warranty seller" means any service warranty association 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 18. AMENDATORY 36 O.S. 2001, Section 6604, is amended to read as follows:

Section 6604. A. No person in this state shall ~~provide or offer to provide service warranties~~ act as a service warranty association 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)~~ Four Hundred Dollars (\$400.00) for such license for each year, or part thereof, the license is in force. All license fees received pursuant to this ~~section~~ subsection shall be paid into the State Treasury to the credit of the Insurance Commissioner Revolving Fund and shall be used for the implementation of the Service Warranty Insurance Act.

C. Each business entity that offers to sell service warranty contracts shall be registered by the Insurance Department and shall meet the following criteria:

1. A registration issued to a business entity that offers to sell service warranty contracts shall encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell service warranty contracts pursuant to this subsection;

2. The registration application must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the registration, and the entity shall pay the registration fee for each office, branch office, or place of business where the entity will sell service warranty contracts;

3. The registered entity shall notify the Department of the name, address, and phone number of any new location that is to be covered by the registration before the new office, branch office, or place of business engages in the sale of service warranty contracts pursuant to this subsection;

4. The registered entity shall notify the Department within thirty (30) days after closing or terminating an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the entity's registration; and

5. A business entity shall pay to the Department a business entity registration fee of Four Hundred Dollars (\$400.00) for each registration separate and in addition to a service warranty association license fee. All registration fees received pursuant to this subsection shall be paid into the State Treasury to the credit of the Insurance Commissioner Revolving Fund and shall be used for the implementation of the Service Warranty Insurance Act.

D. 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 the Service Warranty Insurance Act, but shall be otherwise subject to the provisions of the Service Warranty Insurance Act.

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

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

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

Section 6605. The Insurance Commissioner shall 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~~ Files the bond required by the Service Warranty Insurance 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 20. AMENDATORY 36 O.S. 2001, Section 6607, is amended to read as follows:

Section 6607. A. An association licensed pursuant to the Service Warranty Insurance 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. Additionally, an association establishing such reserve account shall also place in trust with the Insurance Commissioner a surety bond issued by an authorized surety having a value of not less than five percent (5%) of the gross premium received, less claims paid, on the sale of the service warranties for all service contracts issued and in force in this state, but in no event shall the bond be less than Twenty-five Thousand Dollars (\$25,000.00).

B. An association shall not be required to establish an unearned premium reserve or demonstrate minimum net worth if it has purchased ~~contractual liability~~ an insurance policy which demonstrates to the satisfaction of the Insurance Commissioner that one hundred percent (100%) of its claim exposure is covered by such policy and satisfies the requirements of this section. 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~~ is licensed, registered, or otherwise authorized to do business in this state and that meets the requirements of subsection C of this section. For the purposes of this subsection, the ~~contractual liability~~ insurance 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~~ insurance 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. The insurer providing the insurance policy used to satisfy the financial responsibility requirements of subsection B of this section must meet one of the following standards:

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

- a. maintain surplus as to policyholders and paid-in capital of at least Fifteen Million Dollars (\$15,000,000.00), and
- b. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

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

- a. maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars (\$15,000,000.00) but at least equal to Ten Million Dollars (\$10,000,000.00),
- b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and
- c. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer.

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

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

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

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

SECTION 21. AMENDATORY 36 O.S. 2001, Section 6614, is amended to read as follows:

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

B. Each filing of a form 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 the unearned pro rata premium less the actual cost of any service provided under the service warranty contract. 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 less the actual cost of any service provided under the service warranty contract.

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

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

SECTION 22. AMENDATORY 36 O.S. 2001, Section 6615, as last amended by Section 28 of Enrolled Senate Bill No. 2122 of the 2nd Session of the 51st Oklahoma Legislature, is amended to read as follows:

Section 6615. A. In addition to the license fees provided in the Service Warranty Insurance Act for service warranty associations each such association and insurer shall, annually on or before May 1, file with the Insurance Commissioner its annual statement in the form prescribed by the Commissioner showing ~~all premiums~~ gross written premium or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and other relevant financial information as deemed necessary by the Commissioner, using accounting principles which will enable the Commissioner to ascertain whether the financial requirements set forth in Section 6607 of this title have been satisfied.

B. 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 the Service Warranty Insurance Act.

C. 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 the Commissioner deems necessary for the proper supervision of licensees under the Service Warranty Insurance Act.

D. Premiums and assessments received by associations and insurers for service warranties shall not be subject to the premium tax provided for in Section 624 of this title, but shall be subject to an administrative fee of Two Dollars (\$2.00) for each service warranty issued that provides coverage not to exceed Seventy-five

Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty issued that provides coverage in excess of Seventy-five Dollars (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and Ten Dollars (\$10.00) for each service warranty that provides coverage in excess of Two Hundred Fifty Dollars (\$250.00). However, associations and insurers that have contractual liability insurance in place, ~~from a company licensed in the state,~~ an insurer which satisfies the requirements of subsection C of Section 6607 of this title and which covers one hundred percent (100%) of the claims exposure of the association or insurer on all contracts written shall be subject to an annual administrative fee of ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Three Thousand Dollars (\$3,000.00). Said fees shall be paid quarterly to the Insurance Commissioner. All such fees, up to a maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00) per year, received by the Insurance Commissioner shall be deposited into the State Treasury to the credit of the Insurance Commissioner Revolving Fund for the payment of costs incurred by the Insurance Department in the administration of the Service Warranty Insurance Act. Amounts received in excess of the annual limitation shall be deposited to the credit of the General Revenue Fund.

SECTION 23. AMENDATORY 36 O.S. 2001, Section 6617, is amended to read as follows:

Section 6617. 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 24. AMENDATORY 36 O.S. 2001, Section 6620, as amended by Section 5, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2007, Section 6620), is amended to read as follows:

Section 6620. Each service warranty association or insurer shall register, on forms prescribed by the Insurance Commissioner, on or before March 1 of each odd-numbered year, the name and business address of each sales representative required to be registered under Section 6619 of this title utilized by it in this state and, within thirty (30) days after termination of the contract, shall notify the Commissioner of such termination. At the time of biennial registration, a filing fee of Forty Dollars (\$40.00) for each sales representative shall be paid by the service warranty association or insurer to the Commissioner. All such filing fees shall be deposited in the State Treasury to the credit of the Insurance Commissioner Revolving Fund to be used for the implementation of the Service Warranty Insurance Act. Any sales representative utilized subsequent to the March 1 filing date shall be registered with the Commissioner within ten (10) days after such utilization. ~~Pursuant to Section 6619 of this title, any individual who is an attorney licensed to practice law in the State of Oklahoma or an individual licensed under the Oklahoma Real Estate License Code, Oklahoma Mortgage Broker Licensure Act, or Home Inspection Licensing Act, shall not be subject to the registration or filing fee requirements of this section.~~ 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~~ this title.

SECTION 25. AMENDATORY 36 O.S. 2001, Section 6622, is amended to read as follows:

Section 6622. The Insurance Commissioner 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 to circumvent any of the requirements or prohibitions of the Service Warranty Insurance 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~~ Unlawfully rebating, or attempting to unlawfully 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 the Service Warranty Insurance 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 26. AMENDATORY 36 O.S. 2001, Section 6626, is amended to read as follows:

Section 6626. A. If, pursuant to procedures provided for in the Service Warranty Insurance Act, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under the Service Warranty Insurance 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 fine 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. An administrative penalty imposed under this section shall not exceed Five Thousand Dollars (\$5,000.00) in the aggregate for all nonwillful violations of a similar nature or One Hundred Fifty Thousand Dollars (\$150,000.00) in the aggregate for all willful violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation occurs within a single license or filing year and consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of this act occurred.

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

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

SECTION 28. REPEALER 36 O.S. 2001, Section 6602, as last amended by Section 16 of this act, is hereby repealed.

SECTION 29. REPEALER 36 O.S. 2001, Section 6606, is hereby repealed.

SECTION 30. Sections 1, 14 and 16 of this act shall become effective November 1, 2008.

SECTION 31. Sections 2 through 13 of this act shall become effective January 1, 2009.

SECTION 32. Sections 15 and 17 through 29 of this act shall become effective July 1, 2009.

Passed the Senate the 22nd day of May, 2008.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2008.

Presiding Officer of the House
of Representatives