

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1069

By: Marlatt

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5
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2001,
8 Sections 6604, as amended by Section 18, Chapter 353,
9 O.S.L. 2008, 6605, as amended by Section 19, Chapter
10 353, O.S.L. 2008, 6607, as amended by Section 20,
11 Chapter 353, O.S.L. 2008, 6614, as amended by Section
12 21, Chapter 353, O.S.L. 2008, 6615, as last amended
13 by Section 22, Chapter 353, O.S.L. 2008, 6617, as
14 amended by Section 23, Chapter 353, O.S.L. 2008,
15 6620, as last amended by Section 24, Chapter 353,
16 O.S.L. 2008, 6622, as amended by Section 25, Chapter
17 353, O.S.L. 2008, 6626, as amended by Section 26,
18 Chapter 353, O.S.L. 2008, and 6628, as amended by
19 Section 27, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
20 2008, Sections 6604, 6605, 6607, 6614, 6615, 6617,
21 6620, 6622, 6626 and 6628), which relate to the
22 Service Warranty Insurance Act; clarifying language;
23 modifying fee; eliminating certain registration;
24 deleting requirement for appointment of certain
administrator; eliminating certain exclusion; adding
certain deposit requirement; requiring each service
warranty association to deposit and maintain certain
securities; specifying market value of certain
securities; authorizing use of a surety bond;
limiting time period for certain warranty coverage;
providing certain guarantees; providing when a bond
can be cancelled or be subject to cancellation;
requiring replacement bond in certain circumstances;
stating certain obligations of issuer; providing for
suspension of license; giving the State Treasurer
certain responsibilities regarding such securities;
allowing certain exchange or substitution of
securities; specifying duration of such deposit or
bond; specifying which judgment creditors have the
right to levy upon any assets held as a deposit;
eliminating certain bond; providing for requirements

1 regarding the purchase of contractual liability
2 insurance; specifying ratio for certain premiums;
3 eliminating standards relating to certain insurance
4 policy; modifying amount of premium returned after
5 cancellation; modifying fee; modifying information
6 contained in certain register; specifying individuals
7 not subject to certain registration or fee
8 requirements; modifying grounds for certain actions
9 by the Insurance Commissioner; modifying
10 administrative penalty; modifying disclosure
11 statement; providing for codification; providing an
12 effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6604, as
amended by Section 18, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
Section 6604), is amended to read as follows:

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

B. A service warranty association shall pay to the Insurance
Department a license fee of ~~Four Hundred Dollars (\$400.00)~~ Two
Hundred Dollars (\$200.00) for such license for each year, or part
thereof, the license is in force. All license 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.

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

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

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

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

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

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

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

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

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

20 SECTION 2. AMENDATORY 36 O.S. 2001, Section 6605, as
21 amended by Section 19, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
22 Section 6605), is amended to read as follows:

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

4 1. Is a solvent association;

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

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

14 4. ~~Files~~ Makes the deposit or files the bond required by the
15 Service Warranty Insurance Act; and

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

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 6606.1 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 A. To ensure the faithful performance of its obligations to its
23 members or subscribers in the event of insolvency, each service
24 warranty association shall, before being issued a license by the

1 Insurance Commissioner and during such time as the association has
2 premiums in force in this state, deposit and maintain securities of
3 the type eligible for deposit by an insurer pursuant to Section 613
4 of Title 36 of the Oklahoma Statutes. Whenever the market value of
5 the securities deposited with the Commissioner is less than ninety-
6 five percent (95%) of the amount required, the association shall
7 deposit additional securities or otherwise increase the deposit to
8 the amount required. In lieu of the amounts required in Section 613
9 of Title 36 of the Oklahoma Statutes, such securities shall have at
10 all times a market value as follows:

11 1. A new warrantor, before the issuance of its license and
12 before receiving any premiums, shall place and maintain in trust
13 with the Commissioner the amount of Twenty Thousand Dollars
14 (\$20,000.00);

15 2. A warrantor which has Three Hundred Thousand Dollars
16 (\$300,000.00) or less of gross written premiums in this state shall
17 place and maintain in trust with the Commissioner an amount not less
18 than Fifty Thousand Dollars (\$50,000.00);

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

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1 4. A warrantor which has Seven Hundred Fifty Thousand Dollars
2 (\$750,000.00) or more of gross written premiums in this state shall
3 place and maintain in trust with the Commissioner an amount equal to
4 One Hundred Thousand Dollars (\$100,000.00);

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

8 6. All warrantors and warranty sellers upon receipt of written
9 notice from the Commissioner, shall have thirty (30) calendar days
10 in which to make additional deposits as the Commissioner deems
11 necessary, up to the maximum amounts provided in this subsection.

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

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

3 3. No such bond shall be canceled or subject to cancellation
4 unless at least sixty (60) days' advance notice thereof, in writing,
5 is filed with the Commissioner. In the event that notice of
6 termination of the bond is filed with the Commissioner the service
7 warranty association insured thereunder shall, within thirty (30)
8 days of the filing of notice of termination, provide the
9 Commissioner with a replacement bond meeting the requirements of
10 this subsection or deposit additional securities as required under
11 subsection A of this section. The cancellation of a bond shall not
12 relieve the obligation of the issuer of the bond for claims arising
13 out of contracts issued before cancellation of the bond unless a
14 replacement bond or securities are filed. In no event shall the
15 liability of the issuer under the bond exceed the face amount of the
16 bond. If within thirty (30) days of filing the notice of
17 termination no replacement bond or additional security is provided,
18 the Commissioner shall suspend the license of the association until
19 the deposit requirements are satisfied.

20 C. Securities and bonds posted by an association pursuant to
21 this section are for the benefit of, and subject to action thereon
22 in the event of insolvency or impairment of any association or
23 insurer by, any person or persons sustaining an actionable injury

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1 due to the failure of the association to faithfully perform its
2 obligation to its warranty holders.

3 D. The State Treasurer shall be responsible for the safekeeping
4 of all securities deposited with the Commissioner pursuant to the
5 provisions of the Service Warranty Insurance Act. Such securities
6 shall not be subject to taxation, but shall be held exclusively and
7 solely to guarantee the faithful performance by the association of
8 its obligations to its members or subscribers.

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

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

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1 G. No judgment creditor or other claimant of a service warranty
2 association, other than a judgment creditor whose judgment is based
3 on a service warranty contract, shall have the right to levy upon
4 any of the assets or securities held in this state as a deposit
5 pursuant to this section.

6 SECTION 4. AMENDATORY 36 O.S. 2001, Section 6607, as
7 amended by Section 20, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
8 Section 6607), is amended to read as follows:

9 Section 6607. A. An association licensed pursuant to the
10 Service Warranty Insurance Act shall maintain a funded, unearned
11 premium reserve account, consisting of unencumbered assets, equal to
12 a minimum of twenty-five percent (25%) of the gross written premiums
13 received on all warranty contracts in force, wherever written. In
14 the case of multiyear contracts which are offered by associations
15 having net assets of less than Five Hundred Thousand Dollars
16 (\$500,000.00) for which premiums are collected in advance for
17 coverage in a subsequent year, one hundred percent (100%) of the
18 premiums for such subsequent years shall be placed in the funded,
19 unearned premium reserve account. ~~Additionally, an association~~
20 ~~establishing such reserve account shall also place in trust with the~~
21 ~~Insurance Commissioner a surety bond issued by an authorized surety~~
22 ~~having a value of not less than five percent (5%) of the gross~~
23 ~~premium received, less claims paid, on the sale of the service~~
24 ~~warranties for all service contracts issued and in force in this~~

1 ~~state, but in no event shall the bond be less than Twenty five~~
2 ~~Thousand Dollars (\$25,000.00).~~

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

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

23 2. The insurer issuing the ~~insurance~~ contractual liability
24 policy shall assume full responsibility for the administration of

1 claims in the event of the inability of the association to do so;
2 and

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

7 C. ~~The insurer providing the insurance policy used to satisfy~~
8 ~~the financial responsibility requirements of subsection B of this~~
9 ~~section must meet one of the following standards:~~

10 1. ~~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 at least Fifteen Million Dollars~~
14 ~~(\$15,000,000.00), and~~

15 b. ~~annually file copies of the audited financial~~
16 ~~statements of the insurer, its NAIC Annual Statement,~~
17 ~~and the actuarial certification required by and filed~~
18 ~~in the state of domicile of the insurer, or~~

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

21 a. ~~maintain surplus as to policyholders and paid in~~
22 ~~capital of less than Fifteen Million Dollars~~
23 ~~(\$15,000,000.00) but at least equal to Ten Million~~
24 ~~Dollars (\$10,000,000.00),~~

1 ~~b. demonstrate to the satisfaction of the Commissioner~~
2 ~~that the company maintains a ratio of net written~~
3 ~~premiums, wherever written, to surplus as to~~
4 ~~policyholders and paid in capital of not greater than~~
5 ~~three to one, and~~

6 ~~e. 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.~~

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

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

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

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

22 SECTION 5. AMENDATORY 36 O.S. 2001, Section 6614, as
23 amended by Section 21, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
24 Section 6614), is amended to read as follows:

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

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

9 C. Each service warranty contract shall contain a cancellation
10 provision. In the event the contract is canceled by the warranty
11 holder, return of premium shall be based upon ninety percent (90%)
12 of the unearned pro rata premium ~~less the actual cost of any service~~
13 ~~provided under the service warranty contract.~~ In the event the
14 contract is canceled by the association, return of premium shall be
15 based upon one hundred percent (100%) of unearned pro rata premium
16 ~~less the actual cost of any service provided under the service~~
17 ~~warranty contract.~~

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

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

1 SECTION 6. AMENDATORY 36 O.S. 2001, Section 6615, as
2 last amended by Section 22, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
3 2008, Section 6615), is amended to read as follows:

4 Section 6615. A. In addition to the license fees provided in
5 the Service Warranty Insurance Act for service warranty associations
6 each such association and insurer shall, annually on or before May
7 1, file with the Insurance Commissioner its annual statement in the
8 form prescribed by the Commissioner showing ~~gross written premium~~
9 all premiums or assessments received by it in connection with the
10 issuance of service warranties in this state during the preceding
11 calendar year and other relevant financial information as deemed
12 necessary by the Commissioner, using accounting principles which
13 will enable the Commissioner to ascertain whether the financial
14 requirements set forth in Section 6607 of this title have been
15 satisfied.

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

20 C. In addition to an annual statement, the Commissioner may
21 require of licensees, under oath and in the form prescribed by it,
22 quarterly statements or special reports which the Commissioner deems
23 necessary for the proper supervision of licensees under the Service
24 Warranty Insurance Act.

1 D. Premiums and assessments received by associations and
2 insurers for service warranties shall not be subject to the premium
3 tax provided for in Section 624 of this title, but shall be subject
4 to an administrative fee of Two Dollars (\$2.00) for each service
5 warranty issued that provides coverage not to exceed Seventy-five
6 Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty
7 issued that provides coverage in excess of Seventy-five Dollars
8 (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and
9 Ten Dollars (\$10.00) for each service warranty that provides
10 coverage in excess of Two Hundred Fifty Dollars (\$250.00). However,
11 associations and insurers that have contractual liability insurance
12 in place, from ~~an insurer which satisfies the requirements of~~
13 ~~subsection C of Section 6607 of this title and a company licensed in~~
14 the state, which covers one hundred percent (100%) of the claims
15 exposure of the association or insurer on all contracts written
16 shall be subject to an annual administrative fee of ~~Three Thousand~~
17 ~~Dollars (\$3,000.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00).
18 ~~Said~~ The fees shall be paid quarterly to the Insurance Commissioner.
19 All such fees, up to a maximum of Two Hundred Seventy-five Thousand
20 Dollars (\$275,000.00) per year, received by the Insurance
21 Commissioner shall be deposited into the State Treasury to the
22 credit of the Insurance Commissioner Revolving Fund for the payment
23 of costs incurred by the Insurance Department in the administration
24 of the Service Warranty Insurance Act. Amounts received in excess

1 of the annual limitation shall be deposited to the credit of the
2 General Revenue Fund.

3 SECTION 7. AMENDATORY 36 O.S. 2001, Section 6617, as
4 amended by Section 23, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
5 Section 6617), is amended to read as follows:

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

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

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

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

22 SECTION 8. AMENDATORY 36 O.S. 2001, Section 6620, as
23 last amended by Section 24, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
24 2008, Section 6620), is amended to read as follows:

1 Section 6620. Each service warranty association or insurer
2 shall register, on forms prescribed by the Insurance Commissioner,
3 on or before March 1 of each odd-numbered year, the name and
4 business address of each sales representative ~~required to be~~
5 ~~registered under Section 6619 of this title~~ utilized by it in this
6 state and, within thirty (30) days after termination of the
7 contract, shall notify the Commissioner of such termination. At the
8 time of biennial registration, a filing fee of Forty Dollars
9 (\$40.00) for each sales representative shall be paid by the service
10 warranty association or insurer to the Commissioner. All such
11 filing fees shall be deposited in the State Treasury to the credit
12 of the Insurance Commissioner Revolving Fund to be used for the
13 implementation of the Service Warranty Insurance Act. Any sales
14 representative utilized subsequent to the March 1 filing date shall
15 be registered with the Commissioner within ten (10) days after such
16 utilization. Pursuant to Section 6619 of this title, any individual
17 who is an attorney licensed to practice law in the State of Oklahoma
18 or an individual licensed under the Oklahoma Real Estate License
19 Code, Mortgage Broker Licensure Act, or Home Inspection Licensing
20 Act, shall not be subject to the registration or filing fee
21 requirements of this section. No employee or sales representative
22 of a service warranty association or insurer may directly or
23 indirectly solicit or negotiate insurance contracts, or hold himself
24 or herself out in any manner to be an insurance agent, unless so

1 qualified and licensed pursuant to Section 1421 et seq. of this
2 title.

3 SECTION 9. AMENDATORY 36 O.S. 2001, Section 6622, as
4 amended by Section 25, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
5 Section 6622), is amended to read as follows:

6 Section 6622. The Insurance Commissioner shall deny, suspend,
7 revoke, or refuse to renew or continue the registration of any sales
8 representative if it is found that any one or more of the following
9 grounds applicable to the sales representative exist:

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

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

14 3. Willful misrepresentation of any service warranty contract
15 or willful deception with regard to any such contract, done either
16 in person or by any form of dissemination of information or
17 advertising;

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

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- 1 5. Demonstrated lack of fitness or trustworthiness to engage in
2 the business of service warranty;
- 3 6. Demonstrated lack of adequate knowledge and technical
4 competence to engage in the transactions authorized by the
5 registration;
- 6 7. Fraudulent or dishonest practices in the conduct of business
7 under the registration;
- 8 8. Misappropriation, conversion, or unlawful withholding of
9 moneys belonging to an association, insurer, or warranty holder, or
10 to others, and received in the conduct of business under the
11 registration;
- 12 9. ~~Unlawfully rebating~~ Rebating, or attempting to ~~unlawfully~~
13 rebate, or unlawfully dividing, or offering to divide, his or her
14 commission with another;
- 15 10. Willful failure to comply with, or willful violation of,
16 any proper order or rule of the Commissioner, or willful violation
17 of any provision of the Service Warranty Insurance Act; or
- 18 11. Being found guilty of or pleading nolo contendere to a
19 felony or a crime punishable by imprisonment of one (1) year or more
20 under the law of the United States of America or any state thereof
21 or under the law of any other country involving moral turpitude,
22 without regard to whether judgment of conviction has been entered by
23 the court having jurisdiction of such case.

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1 SECTION 10. AMENDATORY 36 O.S. 2001, Section 6626, as
2 amended by Section 26, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
3 Section 6626), is amended to read as follows:

4 Section 6626. A. If, pursuant to procedures provided for in
5 the Service Warranty Insurance Act, it is found that one or more
6 grounds exist for the suspension, revocation, or refusal to renew or
7 continue any registration issued under the Service Warranty
8 Insurance Act, on a first offense and except when such suspension,
9 revocation, or refusal is mandatory, an order may be entered
10 imposing upon the registrant, in lieu of such suspension,
11 revocation, or refusal, an administrative penalty for each violation
12 in the amount of One Hundred Dollars (\$100.00), or in the event of
13 willful misconduct or willful violation on the part of the
14 registrant, an administrative fine not to exceed One Thousand
15 Dollars (\$1,000.00) for each violation. The administrative penalty
16 may be augmented by an amount equal to any commissions received by
17 or accruing to the credit of the registrant in connection with any
18 transaction to which the grounds for suspension, revocation, or
19 refusal are related. ~~An administrative penalty imposed under this~~
20 ~~section shall not exceed Five Thousand Dollars (\$5,000.00) in the~~
21 ~~aggregate for all nonwillful violations of a similar nature or One~~
22 ~~Hundred Fifty Thousand Dollars (\$150,000.00) in the aggregate for~~
23 ~~all willful violations of a similar nature. For purposes of this~~
24 ~~section, violations shall be of a similar nature if the violation~~

1 ~~occurs within a single license or filing year and consists of the~~
2 ~~same or similar course of conduct, action, or practice, irrespective~~
3 ~~of the number of times the act, conduct, or practice which is~~
4 ~~determined to be a violation of this act occurred.~~

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

13 SECTION 11. AMENDATORY 36 O.S. 2001, Section 6628, as
14 amended by Section 27, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
15 Section 6628), is amended to read as follows:

16 Section 6628. ~~A~~ If a service warranty shall contain is issued
17 by a person or entity that is not the manufacturer of the product or
18 a wholesale company marketing the product, a disclosure statement
19 containing substantially the following information: ~~Coverage~~
20 ~~afforded under this contract is not guaranteed by the Oklahoma~~
21 ~~Insurance Guaranty Association~~ in ten-point or larger type shall be
22 attached to the buyer's copy of the service warranty: "This service
23 warranty is not issued by the manufacturer or wholesale company
24 marketing the product. This warranty will not be honored by such

1 manufacturer or wholesale company." No other information shall be
2 placed on the disclosure statement.

3 SECTION 12. This act shall become effective July 1, 2009.

4 SECTION 13. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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