

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1475

By: Johnson (Rob)

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5  
6 AS INTRODUCED

7 An Act relating to service warranties; creating the  
8 Service Warranty Act; providing short title; defining  
9 terms; requiring the Insurance Commissioner to  
10 enforce the provisions of the Service Warranty Act;  
11 providing procedures relating to licensure;  
12 specifying conditions to be met for issuance or  
13 renewal of license; requiring an association to  
14 maintain a reserve account; specifying requirements  
15 of the account; allowing certain insurance policy to  
16 be in lieu of establishing an unearned reserve or  
17 demonstrating the minimum writing ratio; specifying  
18 the requirements of the insurance policy; providing  
19 requirements for the application for license;  
20 allowing for annual renewal upon payment of fee;  
21 allowing license to be revoked or suspended under  
22 certain conditions; providing procedures relating to  
23 the suspension or revocation of the license;  
24 specifying period of suspension; authorizing the  
Insurance Commissioner to impose a fine in lieu of  
suspension or revocation; providing procedures  
related to the filing of forms; requiring certain  
information to be contained in a service warranty  
contract; requiring the Insurance Commissioner to  
disapprove any form under certain conditions;  
requiring an annual statement to be filed by a  
service warranty association; authorizing fine to be  
levied for untimely filing; requiring provider fees  
and assessments to be subject to an administrative  
fee in lieu of the premium tax; authorizing an annual  
administrative fee in lieu of the administrative fee;  
subjecting service warranty association to periodic  
examination by the Insurance Commissioner; requiring  
a licensed service warranty association to maintain  
certain records; requiring service warranty  
association to designate an agent for service of

1 process; requiring provision of the name and address  
2 of each sales representative; authorizing  
3 administrative penalty in lieu of suspension,  
4 revocation or refusal to renew; specifying that a  
5 service warranty association is not authorized to  
6 transact any insurance business; prohibiting an  
7 insurer or service warranty association from acting  
8 as a fronting company for unauthorized insurer or  
9 service warranty association; defining term;  
10 requiring a service warranty to contain a disclosure  
11 statement; directing the Insurance Commissioner to  
12 supervise any dissolution or liquidation of an  
13 association; authorizing criminal penalty for certain  
14 actions; allowing civil actions to be brought against  
15 certain persons; specifying that civil action is not  
16 authorized against the Insurance Commissioner or  
17 Insurance Department; prohibits unfair or deceptive  
18 trade practices; defining unfair or deceptive trade  
19 practices; authorizing Insurance Commissioner to  
20 examine or investigate unfair or deceptive trade  
21 practices; allowing the Insurance Commissioner to  
22 conduct certain hearings in accordance with the  
23 Administrative Procedures Act; requiring the  
24 Insurance Commissioner to enter into a final order;  
requiring the issuance of a cease and desist order if  
it is has been determined that certain practices  
occurred; allowing the Commissioner to order certain  
penalties; authorizing the Insurance Commissioner to  
ask for an injunction under certain conditions;  
specifying that provisions of the Service Warranty  
Act are cumulative; declaring that certain records  
are privileged and confidential; amending 36 O.S.  
2011, Sections 6651 and 6652, which relate to the  
Vehicle Protection Product Act; amending 36 O.S.  
2011, Section 6670, which relates to insurance  
coverage for portable electronics; amending 36 O.S.  
2011, Sections 6751 and 6753, which relate to the  
Oklahoma Home Service Contract Act; modifying the  
name of the Service Warranty Insurance Act; repealing  
36 O.S. 2011, Sections 6601, 6602, 6603, 6604, 6605,  
6607, 6608, 6609, 6610, 6611, 6612, 6613, 6614, 6615,  
6616, 6617, 6618, 6620, 6626, 6627, 6628, 6629, 6630,  
6631, 6632, 6633, 6634, 6635, 6636, 6637, 6638 and  
6639, which relate to the Service Warranty Insurance  
Act; providing for codification; and providing an  
effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 32 of this act shall be known and may be cited as the "Service Warranty Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Service Warranty 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 provider fee" means the total amount of consideration, inclusive of commissions, paid by a consumer for a service warranty 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,

1 including any appliances, electrical, plumbing, heating, cooling or  
2 air conditioning systems, in return for the payment of a segregated  
3 provider fee, when the consumer product or residential structure  
4 becomes defective or suffers operational failure;

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

8 a. an association's total liabilities exceed the  
9 association's total assets excluding goodwill,  
10 franchises, customer lists, patents or trademarks, and  
11 receivables from or advances to officers, directors,  
12 employees, salesmen, and affiliated companies. In  
13 order to include receivables from affiliated companies  
14 as assets as defined pursuant to this subparagraph and  
15 paragraph 10 of this section, the service warranty  
16 association shall provide a written guarantee to  
17 assure repayment of all receivables, loans, and  
18 advances from affiliated companies. The written  
19 guarantee must be made by a guaranteeing organization  
20 which:

21 (1) has been in continuous operation for ten (10)  
22 years or more and has net assets in excess of  
23 Five Hundred Million Dollars (\$500,000,000.00),  
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1 (2) submits a guarantee on a form acceptable to the  
2 Insurance Commissioner that contains a provision  
3 which requires that the guarantee be irrevocable,  
4 unless the guaranteeing organization can  
5 demonstrate to the Commissioner's satisfaction  
6 that the cancellation of the guarantee will not  
7 result in the net assets of the service warranty  
8 association falling below its minimum net asset  
9 requirement and the Commissioner approves  
10 cancellation of the guarantee,

11 (3) initially submits a statement from a certified  
12 public accountant of the guaranteeing  
13 organization attesting that the net assets of the  
14 guaranteeing organization meets or exceeds the  
15 net assets requirement as provided in division  
16 (1) of this subparagraph and that the net assets  
17 of the guaranteeing organization exceed the  
18 amount of the receivable of the service warranty  
19 association that is being guaranteed by the  
20 guaranteeing organization,

21 (4) submits annually to the Commissioner, within  
22 three (3) months after the end of its fiscal  
23 year, with the annual statement required by  
24 Section 14 of this act, a statement from an

1 independent certified public accountant attesting  
2 that the net assets of the guaranteeing  
3 organization meet or exceed the net assets  
4 requirement as provided in division (1) of this  
5 subparagraph and that the net assets of the  
6 guaranteeing organization exceed the amount of  
7 the receivable of the service warranty  
8 association that is being guaranteed by the  
9 guaranteeing organization, and

10 (5) the receivables are maintained as cash or as  
11 marketable securities,

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

14 c. the association has knowingly overvalued its assets;

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

17 10. "Net assets" means the amount by which the total assets of  
18 an association, excluding goodwill, franchises, customer lists,  
19 patents or trademarks, and receivables from or advances to officers,  
20 directors, employees, salesmen, and affiliated companies, exceed the  
21 total liabilities of the association. For purposes of the Service  
22 Warranty Act, the term "total liabilities" does not include the  
23 capital stock, paid-in capital, or retained earning of an  
24 association unless a written guaranty assures repayment and meets

1 the conditions specified in subparagraph a of paragraph 8 of this  
2 section;

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

5 12. "Provider fee" means the total consideration received or to  
6 be received, including sales commissions, by whatever name called,  
7 by a service warranty association for, or related to, the issuance  
8 and delivery of a service warranty, including any charges designated  
9 as assessments or fees for membership, policy, survey, inspection,  
10 or service or other charges. However, a repair charge is not a  
11 provider fee unless it exceeds the usual and customary repair fee  
12 charged by the association, provided the repair is made before the  
13 issuance and delivery of the warranty;

14 13. "Sales representative" means any person utilized by an  
15 insurer or service warranty association for the purpose of selling  
16 or issuing service warranties;

17 14. "Service warranty" means a contract or agreement for a  
18 separately stated consideration for a specific duration to perform  
19 the repair or replacement of property or indemnification for repair  
20 or replacement for the operational or structural failure due to a  
21 defect or failure in materials or workmanship, with or without  
22 additional provision for incidental payment of indemnity under  
23 limited circumstances, including, but not limited to, failure due to  
24 normal wear and tear, towing, rental and emergency road service,

1 road hazard, power surge, and accidental damage from handling or as  
2 otherwise provided for in said contract or agreement; however:

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

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

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

23 d. the term "service warranty" does not include  
24 warranties, guarantees, extended warranties, extended



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

7           e.    the term "service warranty" does not include  
8           warranties, guarantees, extended warranties, extended  
9           guarantees, contract agreements or any other service  
10          contracts, whether or not such service contracts  
11          otherwise meet the definition of service warranty,  
12          issued by a company which has net assets in excess of  
13          One Hundred Million Dollars (\$100,000,000.00). A  
14          service warranty association may use the net assets of  
15          a parent company to qualify under this section if the  
16          net assets of the company issuing the policy total at  
17          least Twenty-five Million Dollars (\$25,000,000.00) and  
18          the parent company maintains net assets of at least  
19          Seventy-five Million Dollars (\$75,000,000.00) not  
20          including the net assets held by the service warranty  
21          associations, and

22          f.    service warranties are not insurance in this state or  
23          otherwise regulated under the Insurance Code;

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

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

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

14 SECTION 3. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 141.3 of Title 15, unless there  
16 is created a duplication in numbering, reads as follows:

17 The Insurance Commissioner shall enforce the provisions of the  
18 Service Warranty Act and shall adopt and promulgate rules and  
19 procedures to implement the provisions of the Service Warranty Act.

20 SECTION 4. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 141.4 of Title 15, unless there  
22 is created a duplication in numbering, reads as follows:

23 A. No person in this state shall act as a service warranty  
24 association unless licensed by the Insurance Commissioner.

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

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

9 D. A service warranty association may appoint an administrator  
10 or other designee to be responsible for any or all of the  
11 administration of service contracts and compliance with the Service  
12 Warranty Act.

13 E. The marketing, sale, offering for sale, issuance, making,  
14 proposing to make and administration of service warranties by  
15 associations and related service warranty sellers, administrators,  
16 and other persons shall be exempt from all provisions of the  
17 Insurance Code.

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

21 SECTION 5. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 141.5 of Title 15, unless there  
23 is created a duplication in numbering, reads as follows:

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

3 1. Is a solvent association;

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

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

13 4. Files the bond required by the Service Warranty Act; and

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

17 SECTION 6. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 141.6 of Title 15, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. An association licensed pursuant to the Service Warranty Act  
21 shall maintain a funded, unearned reserve account, consisting of  
22 unencumbered assets, equal to a minimum of twenty-five percent (25%)  
23 of the gross written provider fees received on all warranty  
24 contracts in force, wherever written. In the case of multiyear

1 contracts which are offered by associations having net assets of  
2 less than Five Hundred Thousand Dollars (\$500,000.00) for which  
3 provider fees are collected in advance for coverage in a subsequent  
4 year, one hundred percent (100%) of the provider fees for such  
5 subsequent years shall be placed in the funded, unearned reserve  
6 account. Additionally, an association establishing such reserve  
7 account shall also place in trust with the Insurance Commissioner a  
8 surety bond issued by an authorized surety having a value of not  
9 less than five percent (5%) of the gross provider fee received, less  
10 claims paid, on the sale of the service warranties for all service  
11 contracts issued and in force in this state, but in no event shall  
12 the bond be less than Twenty-five Thousand Dollars (\$25,000.00).

13 B. An association shall not be required to establish an  
14 unearned reserve or demonstrate the minimum writing ratio required  
15 by subsection D of this section if it has purchased an insurance  
16 policy which demonstrates to the satisfaction of the Insurance  
17 Commissioner that one hundred percent (100%) of its claim exposure  
18 is covered by such policy and satisfies the requirements of this  
19 section. The insurance shall be obtained from an insurer that is  
20 licensed, registered, or otherwise authorized to do business in this  
21 state, that is rated B++ or better by A.M. Best Company, Inc., and  
22 that meets the requirements of subsection C of this section. For  
23 the purposes of this subsection, the insurance policy shall contain  
24 the following provisions:

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

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

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

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

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

18           a. maintain surplus as to policyholders and paid-in  
19 capital of at least Fifteen Million Dollars  
20 (\$15,000,000.00), and

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

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

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

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

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

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

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

- 22            1. A complete review of financial condition;  
23            2. An increase in deposit;  
24            3. A suspension of any new writings; or

1           4. Capital infusion into the business.

2           SECTION 7.           NEW LAW           A new section of law to be codified  
3 in the Oklahoma Statutes as Section 141.7 of Title 15, unless there  
4 is created a duplication in numbering, reads as follows:

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

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

12           1. The location of the home office of the applicant;

13           2. The name and residence address of each director or officer  
14 of the applicant; and

15           3. Other pertinent information as may be required by the  
16 Commissioner.

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

19           1. A copy of the articles of incorporation of the applicant,  
20 certified by the public official having custody of the original, and  
21 a copy of the bylaws of the applicant, certified by the chief  
22 executive officer of the applicant;



1           2. A copy of the most recent financial statement of the  
2 applicant, verified under oath of at least two of its principal  
3 officers; and

4           3. A license fee as required pursuant to Section 4 of this act.

5           D. Upon completion of the application for license, the  
6 Commissioner shall examine the application and make such further  
7 investigation of the applicant as the Commissioner deems advisable.  
8 If the Commissioner finds that the applicant is qualified, the  
9 Commissioner shall issue to the applicant a license as a service  
10 warranty association. If the Commissioner does not find the  
11 applicant to be qualified the Commissioner shall refuse to issue the  
12 license and shall give the applicant written notice of the refusal,  
13 setting forth the grounds of the refusal.

14           E. 1. Any entity that claims one or more of the exclusions  
15 from the definition of service warranty provided in paragraph 14 of  
16 Section 2 of this act shall file audited financial statements and  
17 other information as requested by the Commissioner to document and  
18 verify that the contracts of the entity are not included within the  
19 definition of service warranty.

20           2. Any entity that begins claiming an exclusion exemption  
21 provided by paragraph 14 of Section 2 of this act shall file audited  
22 financial statements and other information as requested by the  
23 Commissioner prior to conducting or continuing business in this  
24 state.

1           3. Any entity approved for an exclusion provided by paragraph  
2 14 of Section 2 of this act may be required by the Commissioner to  
3 provide subsequent audited financial statements and other  
4 information ascertained by the Commissioner to be necessary to  
5 determine continued qualification for an exclusion provided by  
6 paragraph 14 of Section 2 of this act.

7           4. Other information as requested by the Commissioner may  
8 include, but is not limited to, SEC filings, audited financial  
9 statements of affiliates, and organizational data and organizational  
10 charts.

11           SECTION 8.           NEW LAW           A new section of law to be codified  
12 in the Oklahoma Statutes as Section 141.8 of Title 15, unless there  
13 is created a duplication in numbering, reads as follows:

14           Each license issued to a service warranty association shall  
15 expire on November 1 following the date of issuance. If the  
16 association is then qualified under the provisions of the Service  
17 Warranty Act, its license may be renewed annually, upon its request,  
18 and upon payment to the Insurance Commissioner of the license fee in  
19 the amount of Four Hundred Dollars (\$400.00) in advance for each  
20 such license year.

21           SECTION 9.           NEW LAW           A new section of law to be codified  
22 in the Oklahoma Statutes as Section 141.9 of Title 15, unless there  
23 is created a duplication in numbering, reads as follows:

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1       A. The license of any service warranty association may be  
2 revoked or suspended, or the Insurance Commissioner may refuse to  
3 renew any such license, if it is determined that the association has  
4 violated any lawful rule or order of the Commissioner or any  
5 provision of the Service Warranty Act.

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

8       1. Is insolvent or impaired, or is in any condition as would  
9 render its further transaction of service warranties in this state  
10 hazardous or injurious to its warranty holders or to the public;

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

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

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

23       5. Is affiliated with and under the same general management or  
24 interlocking directorate or ownership as another service warranty

1 association which transacts direct warranties in this state without  
2 having a license; or

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

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

11 1. The association is insolvent or impaired;

12 2. The reserve account required by the Service Warranty Act is  
13 not being maintained;

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

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

20 D. A violation of the Service Warranty Act by an insurer is  
21 grounds for suspension or revocation of the insurer's certificate of  
22 authority in this state.

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1           SECTION 10.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 141.10 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4           A.   Suspension or revocation of the license of a service  
5 warranty association shall be by order of the Insurance Commissioner  
6 mailed to the association by certified mail with return receipt  
7 requested. The association shall not solicit or acquire any new  
8 service warranties in this state during the period of any such  
9 suspension or revocation.

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

14           SECTION 11.           NEW LAW           A new section of law to be codified  
15 in the Oklahoma Statutes as Section 141.11 of Title 15, unless there  
16 is created a duplication in numbering, reads as follows:

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

22          B.   During the period of suspension, the association shall file  
23 its annual statement and pay any fees as required by the Service  
24 Warranty Act as if the license had been continued in full force.

1 C. Upon expiration of the suspension period, if within such  
2 period the license has not otherwise terminated the license of the  
3 association shall automatically be reinstated, unless the causes of  
4 the suspension have not been removed or the association is otherwise  
5 not in compliance with the requirements of the Service Warranty Act.

6 SECTION 12. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 141.12 of Title 15, unless there  
8 is created a duplication in numbering, reads as follows:

9 If the Insurance Commissioner finds that one or more grounds  
10 exist for the discretionary revocation or suspension of a  
11 certificate of authority issued under the Service Warranty Act, the  
12 Commissioner may, in lieu of such suspension or revocation, impose a  
13 fine upon the insurer or service warranty association in an amount  
14 not to exceed One Thousand Dollars (\$1,000.00) per violation;  
15 however, if it is found that an insurer or service warranty  
16 association has knowingly and willfully violated a lawful rule or  
17 order of the Commissioner or any provision of the Service Warranty  
18 Act, the Commissioner may impose a fine upon the insurer or  
19 association in an amount not to exceed Ten Thousand Dollars  
20 (\$10,000.00) for each violation.

21 SECTION 13. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 141.13 of Title 15, unless there  
23 is created a duplication in numbering, reads as follows:

24

1 A. No service warranty form or related form shall be issued or  
2 used in this state unless the form has been filed with and approved  
3 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 the provider fee shall be based upon ninety  
12 percent (90%) of the unearned pro rata provider fee less the actual  
13 cost of any service provided under the service warranty contract.  
14 In the event the contract is canceled by the association, return of  
15 premium shall be based upon one hundred percent (100%) of unearned  
16 pro rata provider fee less the actual cost of any service provided  
17 under the service warranty contract.

18 D. Service contracts shall state the name and address of the  
19 provider and shall identify any administrator if different from the  
20 provider, the service contract seller and the service contract  
21 holder to the extent that the name of the service contract holder  
22 has been furnished by the service contract holder. The identities  
23 of the parties are not required to be preprinted on the service  
24

1 contract and may be added to the service contract at the time of  
2 sale.

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

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

9 SECTION 14. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 141.14 of Title 15, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. In addition to the license fees provided in the Service  
13 Warranty Act for service warranty associations each service warranty  
14 association and insurer shall, annually on or before the first day  
15 of May, file with the Insurance Commissioner its annual statement in  
16 the form prescribed by the Commissioner showing all gross written  
17 provider fees or assessments received by it in connection with the  
18 issuance of service warranties in this state during the preceding  
19 calendar year and other relevant financial information as deemed  
20 necessary by the Commissioner, using accounting principles which  
21 will enable the Commissioner to ascertain whether the financial  
22 requirements set forth in Section 7 of this act have been satisfied.

23 B. The Commissioner may levy a fine of up to One Hundred  
24 Dollars (\$100.00) a day for each day an association neglects to file



1 the annual statement in the form and within the time provided by the  
2 Service Warranty Act.

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

8 D. Provider fees and assessments received by associations and  
9 insurers for service warranties shall not be subject to the premium  
10 tax provided for in Section 624 of Title 36 of the Oklahoma  
11 Statutes, but shall be subject to an administrative fee of equal to  
12 two percent (2%) of the gross provider fee received on the sale of  
13 all service contracts issued in this state during the preceding  
14 calendar quarter. The fees shall be paid quarterly to the Insurance  
15 Commissioner. However, licensed associations, licensed insurers and  
16 entities with applications for licensure as a service warranty  
17 association pending with the Department that have contractual  
18 liability insurance in place as of March 31, 2009, from an insurer  
19 which satisfies the requirements of subsections B and C of Section 7  
20 of this act and which covers one hundred percent (100%) of the  
21 claims exposure of the association or insurer on all contracts  
22 written may elect to pay an annual administrative fee of Three  
23 Thousand Dollars (\$3,000.00) in lieu of the two-percent  
24 administrative fee.

1 SECTION 15. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 141.15 of Title, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. Service warranty associations licensed pursuant to the  
5 Service Warranty Act are subject to periodic examination by the  
6 Insurance Commissioner, in the same manner and subject to the same  
7 terms and conditions that apply to insurers.

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

17 SECTION 16. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 141.16 of Title 15, unless there  
19 is created a duplication in numbering, reads as follows:

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

22 1. A complete set of accounting records, including but not  
23 limited to, a general ledger, cash receipts and disbursements  
24

1 journals, accounts receivable registers and accounts payable  
2 registers;

3 2. A detailed warranty register of warranties in force. The  
4 register shall include the date of issue, issuing sales  
5 representative, name of warranty holder, warranty period, gross  
6 provider fee, and net provider fee; and

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

12 SECTION 17. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 141.17 of Title 15, unless there  
14 is created a duplication in numbering, reads as follows:

15 Service warranty associations are required to designate an agent  
16 in this state for service of process.

17 SECTION 18. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 141.18 of Title 15, unless there  
19 is created a duplication in numbering, reads as follows:

20 Along with the annual statement filed pursuant to Section 17 of  
21 this act, each service warranty association or insurer shall provide  
22 the name and business address of each sales representative utilized  
23 by it in this state.

24

1 SECTION 19. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 141.19 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

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

1 or filing year and consists of the same or similar course of  
2 conduct, action, or practice, irrespective of the number of times  
3 the act, conduct, or practice which is determined to be a violation  
4 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 20. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 141.20 of Title 15, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. Nothing in the Service Warranty Act shall be deemed to  
17 authorize any service warranty association to transact any insurance  
18 business or otherwise to engage in any type of insurance unless the  
19 association is authorized under a certificate of authority issued by  
20 the Insurance Commissioner.

21 B. No authorized insurer or licensed service warranty  
22 association shall act as a fronting company for any unauthorized  
23 insurer or unlicensed service warranty association. As used in this  
24 subsection, a "fronting company" is an authorized insurer or

1 licensed service warranty association which, by reinsurance or  
2 otherwise, generally transfers to one or more unauthorized insurers  
3 or unlicensed service warranty associations, the risk of loss under  
4 warranties written by the company in this state.

5 SECTION 21. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 141.21 of Title 15, unless there  
7 is created a duplication in numbering, reads as follows:

8 A service warranty shall contain a disclosure statement  
9 containing substantially the following information: This is not an  
10 insurance contract. Coverage afforded under this contract is not  
11 guaranteed by the Oklahoma Insurance Guaranty Association.

12 SECTION 22. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 141.22 of Title 15, unless there  
14 is created a duplication in numbering, reads as follows:

15 Any dissolution or liquidation of an association subject to the  
16 provisions of the Service Warranty Act shall be under the  
17 supervision of the Insurance Commissioner, who shall have all powers  
18 granted under the laws of this state with respect to the dissolution  
19 and liquidation of property and casualty insurers.

20 SECTION 23. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 141.23 of Title 15, unless there  
22 is created a duplication in numbering, reads as follows:

23 Except as otherwise provided in the Service Warranty Act, any  
24 person who knowingly makes a false or otherwise fraudulent

1 application for license or registration, or who knowingly violates  
2 any provision of the Service Warranty Act, in addition to being  
3 subject to any applicable denial, suspension, revocation, or refusal  
4 to renew or continue any license or registration, shall be subject  
5 to criminal prosecution and if convicted shall be guilty of a  
6 misdemeanor. Each instance of violation shall be considered a  
7 separate offense.

8 SECTION 24. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 141.24 of Title 15, unless there  
10 is created a duplication in numbering, reads as follows:

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

20 B. This section shall not be construed to authorize a civil  
21 action against the Insurance Department, its employees, or the  
22 Insurance Commissioner.

23  
24

1 SECTION 25. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 141.25 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 No person shall engage in this state in any trade practice which  
5 is defined in Section 26 of this act to be an unfair method of  
6 competition or an unfair or deceptive act or practice involving the  
7 business of service warranty.

8 SECTION 26. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 141.26 of Title 15, unless there  
10 is created a duplication in numbering, reads as follows:

11 For purposes of the Service Warranty Act, the following methods,  
12 acts, or practices are defined as unfair methods of competition and  
13 unfair or deceptive acts or practices:

14 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE  
15 WARRANTIES - Knowingly making, issuing, circulating, or causing to  
16 be made, issued, or circulated, any estimate, illustration,  
17 circular, statement, sales presentation, omission, or comparison  
18 which:

- 19 a. misrepresents the benefits, advantages, conditions, or  
20 terms of any service warranty contract,
- 21 b. is misleading or is a misrepresentation as to the  
22 financial condition of any person,
- 23 c. uses any name or title of any contract misrepresenting  
24 the true nature thereof, or



1           d.    is a misrepresentation for the purpose of inducing, or  
2                    tending to induce, the lapse, forfeiture, exchange,  
3                    conversion, or surrender of any service warranty  
4                    contract;

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

9           a.    in a newspaper, magazine, or other publication,

10          b.    in the form of a notice, circular, pamphlet, letter,  
11                    or poster,

12          c.    over any radio or television station, or

13          d.    in any other way,

14 an advertisement, announcement, or statement containing any  
15 assertion, representation, or statement with respect to the business  
16 of service warranty, which assertion, representation, or statement  
17 is untrue, deceptive, or misleading;

18           3.   DEFAMATION - Knowingly making, publishing, disseminating, or  
19 circulating, directly or indirectly, or aiding, abetting, or  
20 encouraging the making, publishing, disseminating, or circulating  
21 of, any oral or written statement, or any pamphlet, circular,  
22 article, or literature, which is false or maliciously critical of,  
23 or derogatory to, any person and which is calculated to injure such  
24 person;

1 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- 2 a. filing with any supervisory or other public official,  
3 b. making, publishing, disseminating, or circulating,  
4 c. delivering to any person,  
5 d. placing before the public,  
6 e. causing, directly or indirectly, to be made,  
7 published, disseminated, circulated, delivered to any  
8 person, or placed before the public, any false  
9 statement, or  
10 f. making any false entry of a material fact in any book,  
11 report, or statement of any person;

12 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- 13 a. attempting to settle claims on the basis of an  
14 application or any other material document which was  
15 altered without notice to, or knowledge or consent of,  
16 the warranty holder,  
17 b. making a material misrepresentation to the warranty  
18 holder for the purpose and with the intent of  
19 effecting settlement of such claims, loss, or damage  
20 under such contract on less favorable terms than those  
21 provided in, and contemplated by, such contract, or  
22 c. committing or performing with such frequency as to  
23 indicate a general business practice any of the  
24 following practices:

- 1 (1) failure properly to investigate claims,
- 2 (2) misrepresentation of pertinent facts or contract
- 3 provisions relating to coverages at issue,
- 4 (3) failure to acknowledge and act promptly upon
- 5 communications with respect to claims,
- 6 (4) denial of claims without conducting reasonable
- 7 investigations based upon available information,
- 8 (5) failure to affirm or deny coverage of claims upon
- 9 written request of the warranty holder within a
- 10 reasonable time after proof-of-loss statements
- 11 have been completed, or
- 12 (6) failure to promptly provide a reasonable
- 13 explanation to the warranty holder of the basis
- 14 in the contract in relation to the facts or
- 15 applicable law for denial of a claim or for the
- 16 offer of a compromise settlement;

17 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

18 Failing to maintain a record of each complaint received for a three-  
19 year period after the date of the receipt of the written complaint;  
20 and

21 7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to

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

1 SECTION 27. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 141.27 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 The Insurance Commissioner shall have the authority to examine  
5 and investigate the affairs of every person involved in the business  
6 of service warranty in this state in order to determine whether such  
7 person has been or is engaged in any unfair method of competition or  
8 in any unfair or deceptive act or practice.

9 SECTION 28. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 141.28 of Title 15, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Whenever the Insurance Commissioner has reason to believe  
13 that any person has engaged, or is engaging, in this state in any  
14 unfair method of competition or any unfair or deceptive act or  
15 practice as defined in Section 26 of this act, or is engaging in the  
16 business of service warranty without being properly licensed, and  
17 that a proceeding by the Commissioner in respect thereto would be in  
18 the interest of the public, the Commissioner shall conduct or cause  
19 to have conducted a hearing in accordance with Article II of the  
20 Administrative Procedures Act.

21 B. A statement of charges, notice, order, or other process may  
22 be served by anyone duly authorized by the Insurance Commissioner,  
23 either in the manner provided by law for service of process in civil  
24 actions or by certifying and mailing a copy thereof to the person

1 affected by such statement, notice, order, or other process at the  
2 residence or principal office or place of business of the person.  
3 The verified return by the person so serving such statement, notice,  
4 order, or other process, setting forth the manner of the service, is  
5 proof of the same; and the return postcard receipt for such  
6 statement, notice, order, or other process, certified and mailed as  
7 provided in this subsection, is proof of service of the same.

8 SECTION 29. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 141.29 of Title 15, unless there  
10 is created a duplication in numbering, reads as follows:

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

20 1. The suspension or revocation of the license of such person,  
21 or eligibility for any license, if the person knew, or reasonably  
22 should have known, he or she was in violation of the Service  
23 Warranty Act; or  
24

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

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

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

14           1. A monetary penalty of not more than Fifty Thousand Dollars  
15 (\$50,000.00) as to all matters determined in such hearing; and

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

18          SECTION 30.        NEW LAW        A new section of law to be codified  
19 in the Oklahoma Statutes as Section 141.30 of Title 15, unless there  
20 is created a duplication in numbering, reads as follows:

21           In addition to the penalties and other enforcement provisions of  
22 the Service Warranty Act, if any person violates any provision of  
23 Section 4 or Section 18 of this act or any rule adopted pursuant  
24 thereto, the Insurance Commissioner may resort to a proceeding for

1 injunction in the district court of the county where such person  
2 resides or has principal place of business, and therein apply for  
3 such temporary and permanent orders as the Commissioner may deem  
4 necessary to restrain the applicable person from engaging in any  
5 such activities, until such person has complied with the applicable  
6 provision or rule.

7 SECTION 31. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 141.31 of Title 15, unless there  
9 is created a duplication in numbering, reads as follows:

10 The provisions of the Service Warranty Act are cumulative to  
11 rights under the general civil and common law, and no action of the  
12 Insurance Commissioner shall abrogate such rights to damages or  
13 other relief in any court.

14 SECTION 32. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 141.32 of Title 15, unless there  
16 is created a duplication in numbering, reads as follows:

17 All active examination or investigatory records of the Insurance  
18 Commissioner made or received pursuant to the Service Warranty Act  
19 shall be deemed privileged and confidential and are not subject to  
20 public inspection for so long as is reasonably necessary to complete  
21 the examination or investigation, except for records which would  
22 otherwise be public records.

23 SECTION 33. AMENDATORY 36 O.S. 2011, Section 6651, is  
24 amended to read as follows:

1 Section 6651. As used in the Vehicle Protection Product Act:

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

5 2. "Commissioner" means the Insurance Commissioner;

6 3. "Department" means the Insurance Department;

7 4. "Incidental costs" means expenses specified in the warranty  
8 incurred by the warranty holder related to the failure of the  
9 vehicle protection product to perform as provided in the warranty.

10 Incidental costs may include insurance policy deductibles, rental  
11 vehicle charges, the difference between the actual value of the  
12 stolen vehicle at the time of theft and the cost of a replacement  
13 vehicle, vehicle excise taxes, vehicle registration fees,  
14 certificate of title fees, transaction fees and mechanical  
15 inspection fees;

16 5. "Service contract" means a contract or agreement as defined  
17 under the Service Warranty ~~Insurance~~ Act in Sections 6601 through  
18 6639 of ~~Title 36 of the Oklahoma Statutes~~ this title;

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

21 a. is installed on or applied to a vehicle,

22 b. is designed to prevent loss or damage to a vehicle  
23 from a specific cause, and

24 c. includes a written warranty.



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

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

13 8. "Vehicle protection product warrantor" or "warrantor" means  
14 a person who is contractually obligated to the warranty holder under  
15 the terms of the vehicle protection product warranty agreement.  
16 Warrantor does not include an authorized insurer providing a  
17 warranty reimbursement insurance policy;

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

20 10. "Warranty reimbursement insurance policy" means a policy of  
21 insurance that is issued to the vehicle protection product warrantor  
22 to provide reimbursement to the warrantor or to pay on behalf of the  
23 warrantor all covered contractual obligations incurred by the  
24

1 warrantor under the terms and conditions of the insured vehicle  
2 protection product warranties issued by the warrantor.

3 SECTION 34. AMENDATORY 36 O.S. 2011, Section 6652, is  
4 amended to read as follows:

5 Section 6652. A. No vehicle protection product may be sold or  
6 offered for sale in this state unless the seller, warrantor, and  
7 administrator, if any, comply with the provisions of the Vehicle  
8 Protection Product Act.

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

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

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

22 SECTION 35. AMENDATORY 36 O.S. 2011, Section 6670, is  
23 amended to read as follows:

24

1 Section 6670. As used in Sections ~~±~~ 6670 through ~~7~~ 6676 of this  
2 ~~act~~ title:

3 1. "Commissioner" means the Insurance Commissioner;

4 2. "Enrolled customer" means a customer who elects coverage  
5 under a portable electronics insurance policy issued to a vendor of  
6 portable electronics;

7 3. "Customer" means a person who purchases portable electronics  
8 or services;

9 4. "Location" means any physical location in the State of  
10 Oklahoma or any website, call center site, or similar location  
11 directed to residents of the State of Oklahoma;

12 5. "Portable electronics" means electronic devices that are  
13 portable in nature, their accessories and services related to the  
14 use of the device;

15 6. "Portable electronics insurance" means insurance providing  
16 coverage for the repair or replacement of portable electronics which  
17 may provide coverage for portable electronics against any one or  
18 more of the following causes of loss: loss, theft, inoperability  
19 due to mechanical failure, malfunction, damage or other similar  
20 causes of loss. "Portable electronics insurance" does not include:

21 a. a service contract governed by the Service Warranty  
22 ~~Insurance~~ Act,

23 b. a policy of insurance covering a seller's or a  
24 manufacturer's obligations under a warranty, or

1 c. a homeowner's, renter's, private passenger automobile,  
2 commercial multi-peril, or similar policy;

3 7. "Portable electronics transaction" means:

4 a. the sale or lease of portable electronics by a vendor  
5 to a customer, or

6 b. the sale of a service related to the use of portable  
7 electronics by a vendor to a customer;

8 8. "Supervising entity" means a business entity that is a  
9 licensed insurer or insurance producer; and

10 9. "Vendor" means a person in the business of engaging in  
11 portable electronics transactions directly or indirectly.

12 SECTION 36. AMENDATORY 36 O.S. 2011, Section 6751, is  
13 amended to read as follows:

14 Section 6751. A. The purpose of the Oklahoma Home Service  
15 Contract Act is to create an independent legal framework within  
16 which home service contracts are defined, may be sold and are  
17 regulated in this state. The Oklahoma Home Service Contract Act  
18 declares that home service contracts, as defined in Section ~~3~~ 6752  
19 of this ~~act~~ title, are not insurance and not otherwise subject to  
20 the Insurance Code. The Oklahoma Home Service Contract Act requires  
21 simple registration, financial assurance options and enforcement by  
22 the Insurance Commissioner. Proper registration under the Oklahoma  
23 Home Service Contract Act exempts applicability under the Service  
24 Warranty ~~Insurance~~ Act, which may regulate extended warranty,

1 retail, automobile and agreements not defined in the Oklahoma Home  
2 Service Contract Act. Nothing in the Service Warranty ~~Insurance~~ Act  
3 is changed or amended by the Oklahoma Home Service Contract Act.

4 B. The following items are exempt from the provisions of the  
5 Oklahoma Home Service Contract Act:

6 1. Warranties as defined in Section ~~3~~ 6752 of this ~~act~~ title;

7 2. Maintenance agreements as defined in Section ~~3~~ 6752 of this  
8 ~~act~~ title; and

9 3. Service contracts sold or offered for sale to persons other  
10 than consumers, consumer product (extended warranty) service  
11 contracts on new retail goods if made at the time of sale and motor  
12 vehicle service contracts, all of which may be separately regulated  
13 elsewhere in the Oklahoma Statutes.

14 C. The types of agreements covered by the Oklahoma Home Service  
15 Contract Act are not insurance and do not have to comply with any  
16 other provision of the Insurance Code outside of the Oklahoma Home  
17 Service Contract Act.

18 SECTION 37. AMENDATORY 36 O.S. 2011, Section 6753, is  
19 amended to read as follows:

20 Section 6753. A. Home service contracts shall not be issued,  
21 sold or offered for sale in this state unless the provider has:

22 1. Provided a receipt for, or other written evidence of, the  
23 purchase of the home service contract to the contract holder; and  
24

1           2. Provided a copy of the home service contract to the service  
2 contract holder within a reasonable period of time from the date of  
3 purchase.

4           B. Each provider of home service contracts sold in this state  
5 shall file a registration with, and on a form prescribed by, the  
6 Insurance Commissioner consisting of their name, full corporate  
7 physical street address, telephone number, contact person and a  
8 designated person in this state for service of process. Each  
9 provider shall pay to the Commissioner a fee in the amount of One  
10 Thousand Two Hundred Dollars (\$1,200.00) upon initial registration  
11 and every three (3) years thereafter. Each provider shall pay to  
12 the Commissioner an Antifraud Assessment Fee of Two Thousand Two  
13 Hundred Fifty Dollars (\$2,250.00) upon initial registration and  
14 every three (3) years thereafter. The registration need only be  
15 updated by written notification to the Commissioner if material  
16 changes occur in the registration on file. A proper registration is  
17 de facto a license to conduct business in Oklahoma and may be  
18 suspended as provided in Section ~~6~~ 6755 of this ~~act~~ title. Fees  
19 received from home service contract providers shall not be subject  
20 to any premium tax, but shall be subject to an administrative fee  
21 equal to two percent (2%) of the gross fees received on the sale of  
22 all home service contracts issued in this state during the preceding  
23 calendar quarter. The fees shall be paid quarterly to the  
24 Commissioner and submitted along with a report on a form prescribed

1 by the Commissioner. However, service contract providers may elect  
2 to pay an annual administrative fee of Three Thousand Dollars  
3 (\$3,000.00) in lieu of the two-percent administrative fee, if the  
4 provider maintains an insurance policy as provided in paragraph 3 of  
5 subsection C of this section.

6 C. In order to assure the faithful performance of a provider's  
7 obligations to its contract holders, each provider shall be  
8 responsible for complying with the requirements of paragraph 1, 2 or  
9 3 of this subsection:

- 10 1. a. maintain a funded reserve account for its obligations  
11 under its contracts issued and outstanding in this  
12 state. The reserves shall not be less than forty  
13 percent (40%) of gross consideration received, less  
14 claims paid, on the sale of the service contract for  
15 all in-force contracts. The reserve account shall be  
16 subject to examination and review by the Commissioner,  
17 and
- 18 b. place in trust with the Commissioner a financial  
19 security deposit, having a value of not less than five  
20 percent (5%) of the gross consideration received, less  
21 claims paid, on the sale of the service contract for  
22 all service contracts issued and in force, but not  
23 less than Twenty-five Thousand Dollars (\$25,000.00),  
24 consisting of one of the following:

- 1 (1) a surety bond issued by an authorized surety,
- 2 (2) securities of the type eligible for deposit by
- 3 authorized insurers in this state,
- 4 (3) cash,
- 5 (4) a letter of credit issued by a qualified
- 6 financial institution, or
- 7 (5) another form of security prescribed by rule
- 8 promulgated by the Commissioner;

- 9 2. a. maintain, or together with its parent company
- 10 maintain, a net worth or stockholders' equity of
- 11 Twenty-five Million Dollars (\$25,000,000.00),
- 12 excluding goodwill, intangible assets, customer lists
- 13 and affiliated receivables, and
- 14 b. upon request, provide the Commissioner with a copy of
- 15 the provider's or the provider's parent company's most
- 16 recent Form 10-K or Form 20-F filed with the
- 17 Securities and Exchange Commission (SEC) within the
- 18 last calendar year, or if the company does not file
- 19 with the SEC, a copy of the company's financial
- 20 statements, which shows a net worth of the provider or
- 21 its parent company of at least Twenty-five Million
- 22 Dollars (\$25,000,000.00) based upon Generally Accepted
- 23 Accounting Principles (GAAP) accounting standards. If
- 24 the provider's parent company's Form 10-K, Form 20-F,



1 or financial statements are filed to meet the  
2 provider's financial stability requirement, then the  
3 parent company shall agree to guarantee the  
4 obligations of the provider relating to service  
5 contracts sold by the provider in this state; or

6 3. Purchase an insurance policy which demonstrates to the  
7 satisfaction of the Insurance Commissioner that one hundred percent  
8 (100%) of its claim exposure is covered by such policy. The  
9 insurance shall be obtained from an insurer that is licensed,  
10 registered, or otherwise authorized to do business in this state,  
11 that is rated B++ or better by A.M. Best Company, Inc., and that  
12 meets the requirements of subsection D of this section. For the  
13 purposes of this paragraph, the insurance policy shall contain the  
14 following provisions:

- 15 a. in the event that the provider is unable to fulfill  
16 its obligation under contracts issued in this state  
17 for any reason, including insolvency, bankruptcy, or  
18 dissolution, the insurer shall pay losses and unearned  
19 premiums under such plans directly to the person  
20 making the claim under the contract,
- 21 b. the insurer issuing the insurance policy shall assume  
22 full responsibility for the administration of claims  
23 in the event of the inability of the provider to do  
24 so, and

1 c. the policy shall not be canceled or not renewed by  
2 either the insurer or the provider unless sixty (60)  
3 days' written notice thereof has been given to the  
4 Commissioner by the insurer before the date of such  
5 cancellation or nonrenewal.

6 D. The insurer providing the insurance policy used to satisfy  
7 the financial responsibility requirements of paragraph 3 of  
8 subsection C of this section shall meet one of the following  
9 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 National Association of  
17 Insurance Commissioners (NAIC) Annual Statement, and  
18 the actuarial certification required by and filed in  
19 the state of domicile of the insurer; or

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

22 a. maintain surplus as to policyholders and paid-in  
23 capital of less than Fifteen Million Dollars  
24 (\$15,000,000.00),

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           c. 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        E. Except for the registration requirements in subsection B of  
11 this section, providers, administrators and other persons marketing,  
12 selling or offering to sell home service contracts are exempt from  
13 any licensing requirements of this state and shall not be subject to  
14 other registration information or security requirements. Home  
15 service contract providers as defined in Section ~~3~~ 6752 of this ~~act~~  
16 title and properly registered under this law are exempt from any  
17 treatment pursuant to the Service Warranty ~~Insurance~~ Act. Home  
18 service contract providers applying for registration under the  
19 Oklahoma Home Service Contract Act that have not been registered in  
20 the preceding twelve (12) months under the act may be subject to a  
21 thirty-day prior review before their registration is deemed  
22 complete. Said applications shall be deemed complete after thirty  
23 (30) days unless the Commissioner takes action in that period under  
24

1 Section ~~6~~ 6755 of this ~~act~~ title, for cause shown, to suspend their  
2 registration.

3 F. The marketing, sale, offering for sale, issuance, making,  
4 proposing to make and administration of home service contracts by  
5 providers and related service contract sellers, administrators, and  
6 other persons, including but not limited to real estate licensees,  
7 shall be exempt from all other provisions of the Insurance Code.

8 SECTION 38. REPEALER 36 O.S. 2011, Sections 6601, 6602  
9 6603, 6604, 6605, 6607, 6608, 6609, 6610, 6611, 6612, 6613, 6614,  
10 6615, 6616, 6617, 6618, 6620, 6626, 6627, 6628, 6629, 6630, 6631,  
11 6632, 6633, 6634, 6635, 6636, 6637, 6638 and 6639, are hereby  
12 repealed.

13 SECTION 39. This act shall become effective November 1, 2012.

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