

1 **SENATE FLOOR VERSION**

2 February 13, 2017

3 **AS AMENDED**

4 SENATE BILL NO. 427

5 By: Quinn of the Senate

6 and

7 Mulready of the House

8 An Act relating to service warranties; amending
9 Section 2, Chapter 150, O.S.L. 2012, as amended by
10 Section 2, Chapter 418, O.S.L. 2014 (15 O.S. Supp.
11 2016, Section 141.2), which relates to definitions;
12 modifying definitions; amending Section 4, Chapter
13 150, O.S.L. 2012 (15 O.S. Supp. 2016, Section 141.4),
14 which relates to licensure and exemptions; modifying
15 references from service contracts to service
16 warranties; amending Section 6, Chapter 150, O.S.L.
17 2012 (15 O.S. Supp. 2016, Section 141.6), which
18 relates to unearned reserve accounts; amending
19 Section 7, Chapter 150, O.S.L. 2012 (15 O.S. Supp.
20 2016, Section 141.7), which relates to application
21 for licenses; updating statutory references;
22 exempting certain entities from filing financial
23 statements; requiring certain entities to make
24 certain filings; amending Section 13, Chapter 150,
O.S.L. 2012, as amended by Section 1, Chapter 64,
O.S.L. 2016 (15 O.S. Supp. 2016, Section 141.13),
which relates to service warranty forms; authorizing
certain information to be printed on service
warranties at time of sale; specifying terms of
information printed on service warranties at time of
sale; amending Section 14, Chapter 150, O.S.L. 2012
(15 O.S. Supp. 2016, Section 141.14), which relates
to annual statement filings; amending Section 18,
Chapter 150, O.S.L. 2012, as amended by Section 3,
Chapter 418, O.S.L. 2014 (15 O.S. Supp. 2016, Section
141.18), which relates to names and addresses of
sales representatives; removing annual statement
filing requirement; requiring service warranty
associations and insurers to maintain a registry of
certain addresses; authorizing the Insurance

1 Commissioner to request registry; specifying terms of
2 requesting registry; amending Section 26, Chapter
3 150, O.S.L. 2012, as amended by Section 2, Chapter
4 64, O.S.L. 2016 (15 O.S. Supp. 2016, Section 141.26),
5 which relates to unfair methods of competition and
6 unfair acts; adding certain fraudulent acts related
7 to service warranties; and providing an effective
8 date.

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

10 SECTION 1. AMENDATORY Section 2, Chapter 150, O.S.L.
11 2012, as amended by Section 2, Chapter 418, O.S.L. 2014 (15 O.S.
12 Supp. 2016, Section 141.2), is amended to read as follows:

13 Section 141.2. As used in the Service Warranty Act:

14 1. "Commissioner" means the Insurance Commissioner;

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

17 3. "Department" means the Insurance Department;

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

20 5. "Gross written provider fee" means the total amount of
21 consideration, inclusive of commissions, paid by a consumer for a
22 service warranty issued in this state;

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

24 7. "Indemnify" means to undertake repair or replacement of a
consumer product or a newly-constructed residential structure,
including any appliances, electrical, plumbing, heating, cooling or

1 air conditioning systems, in return for the payment of a segregated
2 provider fee, when the consumer product or residential structure
3 becomes defective or suffers operational failure;

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

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

20 (1) has been in continuous operation for ten (10)
21 years or more and has net assets in excess of
22 Five Hundred Million Dollars (\$500,000,000.00),
23 (2) submits a guarantee on a form acceptable to the
24 Insurance Commissioner that contains a provision

1 which requires that the guarantee be irrevocable,
2 unless the guaranteeing organization can
3 demonstrate to the Commissioner's satisfaction
4 that the cancellation of the guarantee will not
5 result in the net assets of the service warranty
6 association falling below its minimum net asset
7 requirement and the Commissioner approves
8 cancellation of the guarantee,

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

19 (4) submits annually to the Commissioner, within
20 three (3) months after the end of its fiscal
21 year, with the annual statement required by
22 Section 141.14 of this title, a statement from an
23 independent certified public accountant attesting
24 that the net assets of the guaranteeing

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

8 (5) the receivables are maintained as cash or as
9 marketable securities,

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

12 c. the association has knowingly overvalued its assets;

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

15 10. "Motor vehicle ancillary service" includes any one or more
16 of the following services:

17 a. repair or replacement of tires and/or wheels on a
18 motor vehicle damaged as a result of coming into
19 contact with road hazards,

20 b. the removal of dents, dings or creases on a motor
21 vehicle that can be repaired using the process of
22 paintless dent removal without affecting the existing
23 paint finish and without replacement vehicle body
24 panels, sanding, bonding or painting,

- 1 c. the repair of chips or cracks in or the replacement of
2 motor vehicle windshields as a result of damage caused
3 by road hazards,
4 d. the replacement of a motor vehicle key or key-fob in
5 the event that the key or key-fob becomes inoperable
6 or is lost or stolen,
7 e. payment to or services provided under the terms of an
8 ancillary protection product, or
9 f. other services which may be approved by the
10 Commissioner, if not inconsistent with other
11 provisions of this act.

12 A motor vehicle ancillary service does not include repair and/or
13 replacement of damage to the interior surfaces of a vehicle, or for
14 repair and/or replacement of damage to the exterior paint or finish
15 of a vehicle; however, such coverage may be offered in connection
16 with the sale of a motor vehicle ancillary protection product as
17 defined in this section;

18 11. "Motor vehicle ancillary protection product" or "ancillary
19 protection product" means a protective chemical substance, device or
20 system that:

- 21 a. is installed on or applied to a motor vehicle,
22 b. is designed to prevent loss or damage to a motor
23 vehicle from a specific cause, and
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1 c. includes, within or as an accompaniment to a service
2 warranty, a written agreement that provides that, if
3 the ancillary protection product fails to prevent loss
4 or damage to a motor vehicle from a specific cause,
5 the provider will pay to or on behalf of the service
6 ~~contract~~ warranty holder specified incidental costs as
7 a result of the failure of the ancillary protection
8 product to perform pursuant to the terms of the
9 ancillary protection product warranty. The
10 reimbursement of incidental cost(s) promised under an
11 ancillary protection product warranty must be tied to
12 the purchase of a physical product that is formulated
13 or designed to make the specified loss or damage from
14 a specific cause less likely to occur.

15 For purposes of this section, the term ancillary protection
16 product shall include, but not be limited to, protective chemicals,
17 alarm systems, body-part-marking products, steering locks, window-
18 etch products, pedal and ignition locks, fuel and ignition kill
19 switches and electronic, radio or satellite tracking devices.
20 Ancillary protection product does not include fuel additives, oil
21 additives or other chemical products applied to the engine,
22 transmission, or fuel system of a motor vehicle;

23 12. "Net assets" means the amount by which the total assets of
24 an association, excluding goodwill, franchises, customer lists,

1 patents or trademarks, and receivables from or advances to officers,
2 directors, employees, salesmen and affiliated companies, exceed the
3 total liabilities of the association. For purposes of the Service
4 Warranty Act, the term "total liabilities" does not include the
5 capital stock, paid-in capital or retained earning of an association
6 unless a written guaranty assures repayment and meets the conditions
7 specified in subparagraph a of paragraph 8 of this section;

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

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

19 15. "Road hazard" means a hazard that is encountered while
20 driving a motor vehicle and which may include, but not be limited
21 to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs
22 or composite scraps;

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

4 17. "Service warranty" means a contract or agreement for a
5 separately stated consideration for a specific duration to perform
6 the repair or replacement of property or indemnification for repair
7 or replacement for the operational or structural failure due to a
8 defect or failure in materials or workmanship, with or without
9 additional provision for incidental payment of indemnity under
10 limited circumstances, including, but not limited to, failure due to
11 normal wear and tear, towing, rental and emergency road service,
12 road hazard, power surge, and accidental damage from handling or as
13 otherwise provided for in the contract or agreement. The term
14 "service warranty" includes a contract or agreement to provide one
15 or more motor vehicle ancillary service(s) as defined by this
16 section. However:

- 17 a. maintenance service contracts under the terms of which
18 there are no provisions for such indemnification are
19 expressly excluded from this definition,
- 20 b. those contracts issued solely by the manufacturer,
21 distributor, importer or seller of the product, or any
22 affiliate or subsidiary of the foregoing entities,
23 whereby such entity has contractual liability
24 insurance in place, from an insurer licensed in the

1 state, which covers one hundred percent (100%) of the
2 claims exposure on all contracts written without being
3 predicated on the failure to perform under such
4 contracts, are expressly excluded from this
5 definition,

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

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

21 e. the term "service warranty" does not include
22 warranties, guarantees, extended warranties, extended
23 guarantees, contract agreements or any other service
24 contracts, whether or not such service contracts

1 otherwise meet the definition of service warranty,
2 issued by a company which has net assets in excess of
3 One Hundred Million Dollars (\$100,000,000.00). A
4 service warranty association may use the net assets of
5 a parent company to qualify under this section if the
6 net assets of the company issuing the policy total at
7 least Twenty-five Million Dollars (\$25,000,000.00) and
8 the parent company maintains net assets of at least
9 Seventy-five Million Dollars (\$75,000,000.00) not
10 including the net assets held by the service warranty
11 associations,

12 f. service warranties are not insurance in this state or
13 otherwise regulated under the Insurance Code, and;

14 g. motor service club contracts governed under Article 31
15 of Title 36 of the Oklahoma Statutes are expressly
16 excluded from this definition;

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

22 19. "Warrantor" means any service warranty association engaged
23 in the sale of service warranties and deriving not more than fifty
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1 percent (50%) of its gross income from the sale of service
2 warranties; and

3 20. "Warranty seller" means any service warranty association
4 engaged in the sale of service warranties and deriving more than
5 fifty percent (50%) of its gross income from the sale of service
6 warranties.

7 SECTION 2. AMENDATORY Section 4, Chapter 150, O.S.L.
8 2012 (15 O.S. Supp. 2016, Section 141.4), is amended to read as
9 follows:

10 Section 141.4. A. No person in this state shall act as a
11 service warranty association unless licensed by the Insurance
12 Commissioner.

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

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

21 D. A service warranty association may appoint an administrator
22 or other designee to be responsible for any or all of the
23 administration of service ~~contracts~~ warranties and compliance with
24 the Service Warranty Act.

1 E. The marketing, sale, offering for sale, issuance, making,
2 proposing to make and administration of service warranties by
3 associations and related service warranty sellers, administrators,
4 and other persons shall be exempt from all provisions of the
5 Insurance Code.

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

9 SECTION 3. AMENDATORY Section 6, Chapter 150, O.S.L.
10 2012 (15 O.S. Supp. 2016, Section 141.6), is amended to read as
11 follows:

12 Section 141.6. A. An association licensed pursuant to the
13 Service Warranty Act shall maintain a funded, unearned reserve
14 account, consisting of unencumbered assets, equal to a minimum of
15 twenty-five percent (25%) of the gross written provider fees
16 received on all warranty contracts in force, wherever written. In
17 the case of multiyear contracts which are offered by associations
18 having net assets of less than Five Hundred Thousand Dollars
19 (\$500,000.00) for which provider fees are collected in advance for
20 coverage in a subsequent year, one hundred percent (100%) of the
21 provider fees for such subsequent years shall be placed in the
22 funded, unearned reserve account. Additionally, an association
23 establishing such reserve account shall also place in trust with the
24 Insurance Commissioner a surety bond issued by an authorized surety

1 having a value of not less than five percent (5%) of the gross
2 provider fee received, less claims paid, on the sale of the service
3 warranties for all service ~~contracts~~ warranties issued and in force
4 in this state, but in no event shall the bond be less than Twenty-
5 five Thousand Dollars (\$25,000.00).

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

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

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

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

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

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

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

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

1 (\$15,000,000.00) but at least equal to Ten Million
2 Dollars (\$10,000,000.00),

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

8 c. annually file copies of the audited financial
9 statements of the insurer, its NAIC Annual Statement,
10 and the actuarial certification required by and filed
11 in the state of domicile of the insurer.

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

14 E. If the gross written provider fees of a warrantor or a
15 warranty seller exceed the required net asset ratios, the
16 Commissioner may require, in addition to other measures as the
17 Commissioner deems 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 4. AMENDATORY Section 7, Chapter 150, O.S.L.
23 2012 (15 O.S. Supp. 2016, Section 141.7), is amended to read as
24 follows:

1 Section 141.7. A. An application for license as a service
2 warranty association shall be made to, and filed with, the Insurance
3 Commissioner on printed forms as prescribed and furnished by the
4 Insurance Commissioner.

5 B. In addition to information relative to its qualifications as
6 required under ~~Section 5 of this act~~ Section 141.5 of this title,
7 the Commissioner may require that the application show:

- 8 1. The location of the home office of the applicant;
- 9 2. The name and residence address of each director or officer
10 of the applicant; and
- 11 3. Other pertinent information as may be required by the
12 Commissioner.

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

- 15 1. A copy of the articles of incorporation of the applicant,
16 certified by the public official having custody of the original, and
17 a copy of the bylaws of the applicant, certified by the chief
18 executive officer of the applicant;
- 19 2. A copy of the most recent financial statement of the
20 applicant, verified under oath of at least two of its principal
21 officers; and
- 22 3. A license fee as required pursuant to ~~Section 4 of this act~~
23 Section 141.4 of this title.

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

10 E. 1. Any entity that claims one or more of the exclusions
11 from the definition of service warranty provided in paragraph ~~14~~ 17
12 of Section ~~2~~ 141.2 of this ~~act~~ title shall file audited financial
13 statements and other information as requested by the Commissioner to
14 document and verify that the contracts of the entity are not
15 included within the definition of service warranty. Financial
16 statements are not required to be filed by an entity claiming one of
17 the exclusions set forth in subparagraphs (a) and (b) of paragraph
18 17 of Section 141.2 of this title.

19 2. Any entity that begins claiming an exclusion exemption as
20 provided by paragraph ~~14~~ 17 of Section ~~2~~ 141.2 of this ~~act~~ title
21 shall ~~file audited financial statements and other information as~~
22 ~~requested by the Commissioner~~ make the filing required by subsection
23 E of this section prior to conducting or continuing business in this
24 state.

1 3. Any entity approved for an exclusion exemption as provided
2 by paragraph ~~14~~ 17 of Section ~~2~~ 141.2 of this ~~act~~ title may be
3 required by the Commissioner to provide subsequent ~~audited financial~~
4 ~~statements and other~~ information ascertained by the Commissioner to
5 be necessary to determine continued qualification for an exclusion
6 exemption as provided by paragraph ~~14~~ 17 of Section ~~2~~ 141.2 of this
7 ~~act~~ title. Financial statements shall not be required to be filed
8 by an entity claiming one of the exclusions set forth in
9 subparagraphs (a) and (b) of paragraph 17 of Section 141.2 of this
10 title.

11 4. Other information requested by the Commissioner may include,
12 but is not limited to, SEC filings, audited financial statements of
13 affiliates, and organizational data and organizational charts.
14 Financial statements shall not be required to be filed by an entity
15 claiming one of the exclusions set forth in subparagraphs (a) and
16 (b) of paragraph 17 of Section 141.2 of this title.

17 SECTION 5. AMENDATORY Section 13, Chapter 150, O.S.L.
18 2012, as amended by Section 1, Chapter 64, O.S.L. 2016 (15 O.S.
19 Supp. 2016, Section 141.13), is amended to read as follows:

20 Section 141.13. A. No service warranty form or related form
21 shall be issued or used in this state unless the form has been filed
22 with and approved by the Insurance Commissioner.

23 B. Each filing of a form shall be made not less than thirty
24 (30) days in advance of its issuance or use. At the expiration of

1 thirty (30) days from date of filing, a form so filed shall be
2 deemed approved unless prior thereto it has been affirmatively
3 disapproved by written order of the Commissioner.

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

13 D. Service ~~contracts~~ warranties shall state the name and
14 address of the service warranty association and shall identify any
15 administrator if different from the service warranty association,
16 the service ~~contract~~ warranty seller and the service ~~contract~~
17 warranty holder to the extent that the name of the service ~~contract~~
18 warranty holder has been furnished by the service ~~contract~~ warranty
19 holder. For service ~~contracts~~ warranties issued on and after July
20 1, ~~2016~~ 2017, the identity of the service warranty association and
21 its license number shall be preprinted on the service ~~contract~~
22 warranty or added at the time of sale so consumers can clearly
23 identify the obligor of the service warranty. Information to be
24 printed at the time of sale shall be indicated as such at the time

1 the service warranty is filed for approval and a "Jane Doe" specimen
2 shall accompany the service warranty illustrating how the service
3 warranty will look after printing.

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

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

10 F. The Insurance Commissioner may, by order, exempt from the
11 requirements of this section for so long as he or she deems proper
12 any document or form or type thereof as specified in such order, to
13 which, in his or her discretion this section may not practicably be
14 applied, or the filing and approval of which are, in his or her
15 opinion, not desirable or necessary for the protection of the
16 public.

17 SECTION 6. AMENDATORY Section 14, Chapter 150, O.S.L.
18 2012 (15 O.S. Supp. 2016, Section 141.14), is amended to read as
19 follows:

20 Section 141.14. A. In addition to the license fees provided in
21 the Service Warranty Act for service warranty associations each
22 service warranty association and insurer shall annually, on or
23 before the first day of May, file with the Insurance Commissioner
24 its annual statement in the form prescribed by the Commissioner

1 showing all gross written provider fees or assessments received by
2 it in connection with the issuance of service warranties in this
3 state during the preceding calendar year and other relevant
4 financial information as deemed necessary by the Commissioner, using
5 accounting principles which will enable the Commissioner to
6 ascertain whether the financial requirements set forth in Section 7
7 141.7 of this ~~act~~ title have been satisfied.

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

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

17 D. Provider fees and assessments received by associations and
18 insurers for service warranties shall not be subject to the premium
19 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,
20 but shall be subject to an administrative fee of equal to two
21 percent (2%) of the gross provider fee received on the sale of all
22 service ~~contracts~~ warranties issued in this state during the
23 preceding calendar quarter. The fees shall be paid quarterly to the
24 Insurance Commissioner. However, licensed associations, licensed

1 insurers and entities with applications for licensure as a service
2 warranty association pending with the Department that have
3 contractual liability insurance in place as of March 31, 2009, from
4 an insurer which satisfies the requirements of subsections B and C
5 of Section 7 141.7 of this ~~act~~ title and which covers one hundred
6 percent (100%) of the claims exposure of the association or insurer
7 on all contracts written may elect to pay an annual administrative
8 fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent
9 administrative fee.

10 SECTION 7. AMENDATORY Section 18, Chapter 150, O.S.L.
11 2012, as amended by Section 3, Chapter 418, O.S.L. 2014 (15 O.S.
12 Supp. 2016, Section 141.18), is amended to read as follows:

13 Section 141.18. ~~Along with the annual statement filed pursuant~~
14 ~~to Section 141.14 of this title, each~~ Each service warranty
15 association or insurer shall ~~provide~~ maintain a registry of the name
16 and business address of each sales representative utilized by it in
17 this state. Upon request by the Insurance Commissioner and with ten
18 (10) days' notice to the service warranty association or insurer,
19 the registry shall be provided to the Insurance Commissioner.

20 SECTION 8. AMENDATORY Section 26, Chapter 150, O.S.L.
21 2012, as amended by Section 2, Chapter 64, O.S.L. 2016 (15 O.S.
22 Supp. 2016, Section 141.26), is amended to read as follows:

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1 Section 141.26. For purposes of the Service Warranty Act, the
2 following methods, acts, or practices are defined as unfair methods
3 of competition and unfair or deceptive acts or practices:

4 1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE

5 WARRANTIES - Knowingly making, issuing, circulating, or causing to
6 be made, issued, or circulated, any estimate, illustration,
7 circular, statement, sales presentation, omission, or comparison
8 which:

- 9 a. misrepresents the benefits, advantages, conditions, or
10 terms of any service warranty contract,
- 11 b. is misleading or is a misrepresentation as to the
12 financial condition of any person,
- 13 c. uses any name or title of any contract misrepresenting
14 the true nature thereof, or
- 15 d. is a misrepresentation for the purpose of inducing, or
16 tending to induce, the lapse, forfeiture, exchange,
17 conversion, or surrender of any service warranty
18 contract;
- 19 e. is false, deceptive or misleading with respect to:
- 20 (1) the service warranty association's affiliation
21 with a motor vehicle manufacturer,
- 22 (2) the service warranty association's possession of
23 information regarding a motor vehicle owner's
24

1 current motor vehicle manufacturer's original
2 equipment warranty,

3 (3) the expiration of a motor vehicle owner's current
4 motor vehicle manufacturer's original equipment
5 warranty, or

6 (4) a requirement that a motor vehicle owner register
7 for a new service warranty with such provider in
8 order to maintain coverage under the motor
9 vehicle owner's current service warranty or
10 manufacturer's original equipment warranty;

11 2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly
12 making, publishing, disseminating, circulating, or placing before
13 the public, or causing, directly or indirectly, to be made,
14 published, disseminated, circulated, or placed before the public:

- 15 a. in a newspaper, magazine, or other publication,
16 b. in the form of a notice, circular, pamphlet, letter,
17 or poster,
18 c. over any radio or television station, or
19 d. in any other way,

20 an advertisement, announcement, or statement containing any
21 assertion, representation, or statement with respect to the business
22 of service warranty, which assertion, representation, or statement
23 is untrue, deceptive, or misleading;

24

1 3. DEFAMATION - Knowingly making, publishing, disseminating, or
2 circulating, directly or indirectly, or aiding, abetting, or
3 encouraging the making, publishing, disseminating, or circulating
4 of, any oral or written statement, or any pamphlet, circular,
5 article, or literature, which is false or maliciously critical of,
6 or derogatory to, any person and which is calculated to injure such
7 person;

8 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

9 a. filing with any supervisory or other public official,

10 b. making, publishing, disseminating, or circulating,

11 c. delivering to any person,

12 d. placing before the public,

13 e. causing, directly or indirectly, to be made,

14 published, disseminated, circulated, delivered to any

15 person, or placed before the public, any false

16 statement, or

17 f. making any false entry of a material fact in any book,

18 report, or statement of any person;

19 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

20 a. attempting to settle claims on the basis of an

21 application or any other material document which was

22 altered without notice to, or knowledge or consent of,

23 the warranty holder,

24

- 1 b. making a material misrepresentation to the warranty
2 holder for the purpose and with the intent of
3 effecting settlement of such claims, loss, or damage
4 under such contract on less favorable terms than those
5 provided in, and contemplated by, such contract, or
6 c. committing or performing with such frequency as to
7 indicate a general business practice any of the
8 following practices:
- 9 (1) failure properly to investigate claims,
 - 10 (2) misrepresentation of pertinent facts or contract
11 provisions relating to coverages at issue,
 - 12 (3) failure to acknowledge and act promptly upon
13 communications with respect to claims,
 - 14 (4) denial of claims without conducting reasonable
15 investigations based upon available information,
 - 16 (5) failure to affirm or deny coverage of claims upon
17 written request of the warranty holder within a
18 reasonable time after proof-of-loss statements
19 have been completed, or
 - 20 (6) failure to promptly provide a reasonable
21 explanation to the warranty holder of the basis
22 in the contract in relation to the facts or
23 applicable law for denial of a claim or for the
24 offer of a compromise settlement;

1 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -
2 Failing to maintain a record of each complaint received for a three-
3 year period after the date of the receipt of the written complaint;

4 7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to
5 issue a contract solely because of an individual's race, color,
6 creed, marital status, sex, or national origin; and

7 8. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE -
8 Failing to provide a consumer with a complete sample copy of the
9 terms and conditions of the service warranty prior to before the
10 time of sale upon a request for the same by the consumer. A service
11 warranty association may comply with the provisions of this
12 paragraph by providing the consumer with a sample copy of the terms
13 and conditions of the warranty contract or by directing the consumer
14 to a website that displays a complete sample of the terms and
15 conditions of the contract.

16 SECTION 9. This act shall become effective November 1, 2017.

17 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
18 February 13, 2017 - DO PASS AS AMENDED
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