

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 56th Legislature (2017)

4   ENGROSSED SENATE  
5   BILL NO. 427

By: Quinn of the Senate

and

Mulready of the House

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8  
9       An Act relating to service warranties; amending  
10      Section 2, Chapter 150, O.S.L. 2012, as amended by  
11      Section 2, Chapter 418, O.S.L. 2014 (15 O.S. Supp.  
12      2016, Section 141.2), which relates to definitions;  
13      modifying definitions; amending Section 4, Chapter  
14      150, O.S.L. 2012 (15 O.S. Supp. 2016, Section 141.4),  
15      which relates to licensure and exemptions; modifying  
16      references from service contracts to service  
17      warranties; amending Section 6, Chapter 150, O.S.L.  
18      2012 (15 O.S. Supp. 2016, Section 141.6), which  
19      relates to unearned reserve accounts; amending  
20      Section 7, Chapter 150, O.S.L. 2012 (15 O.S. Supp.  
21      2016, Section 141.7), which relates to application  
22      for licenses; updating statutory references;  
23      exempting certain entities from filing financial  
24      statements; requiring certain entities to make  
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; removal of  
certain approval by Commissioner; exempting certain  
forms from requiring prior approval; removing certain  
time requirement for filing form; authorizing  
Commissioner to order certain entities to cease  
operations in certain circumstances; 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 Commissioner to request registry; specifying terms of requesting registry; amending Section 26, Chapter 150, O.S.L. 2012, as amended by Section 2, Chapter 64, O.S.L. 2016 (15 O.S. Supp. 2016, Section 141.26), which relates to unfair methods of competition and unfair acts; adding certain fraudulent acts related to service warranties; and providing an effective date.

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

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

Section 141.2. 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;

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

2       7. "Indemnify" means to undertake repair or replacement of a  
3 consumer product or a newly-constructed residential structure,  
4 including any appliances, electrical, plumbing, heating, cooling or  
5 air conditioning systems, in return for the payment of a segregated  
6 provider fee, when the consumer product or residential structure  
7 becomes defective or suffers operational failure;

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

11           a. an association's total liabilities exceed the  
12 association's total assets excluding goodwill,  
13 franchises, customer lists, patents or trademarks, and  
14 receivables from or advances to officers, directors,  
15 employees, salesmen, and affiliated companies. In  
16 order to include receivables from affiliated companies  
17 as assets as defined pursuant to this subparagraph and  
18 paragraph 12 of this section, the service warranty  
19 association shall provide a written guarantee to  
20 assure repayment of all receivables, loans, and  
21 advances from affiliated companies. The written  
22 guarantee must be made by a guaranteeing organization  
23 which:  
24

- 1 (1) has been in continuous operation for ten (10)  
2 years or more and has net assets in excess of  
3 Five Hundred Million Dollars (\$500,000,000.00),  
4 (2) submits a guarantee on a form acceptable to the  
5 Insurance Commissioner that contains a provision  
6 which requires that the guarantee be irrevocable,  
7 unless the guaranteeing organization can  
8 demonstrate to the Commissioner's satisfaction  
9 that the cancellation of the guarantee will not  
10 result in the net assets of the service warranty  
11 association falling below its minimum net asset  
12 requirement and the Commissioner approves  
13 cancellation of the guarantee,  
14 (3) initially submits a statement from a certified  
15 public accountant of the guaranteeing  
16 organization attesting that the net assets of the  
17 guaranteeing organization meet or exceed the net  
18 assets requirement as provided in division (1) of  
19 this subparagraph and that the net assets of the  
20 guaranteeing organization exceed the amount of  
21 the receivable of the service warranty  
22 association that is being guaranteed by the  
23 guaranteeing organization,  
24

1 (4) submits annually to the Commissioner, within  
2 three (3) months after the end of its fiscal  
3 year, with the annual statement required by  
4 Section 141.14 of this title, a statement from an  
5 independent certified public accountant attesting  
6 that the net assets of the guaranteeing  
7 organization meet or exceed the net assets  
8 requirement as provided in division (1) of this  
9 subparagraph and that the net assets of the  
10 guaranteeing organization exceed the amount of  
11 the receivable of the service warranty  
12 association that is being guaranteed by the  
13 guaranteeing organization, and

14 (5) the receivables are maintained as cash or as  
15 marketable securities,

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

18 c. the association has knowingly overvalued its assets;

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

21 10. "Motor vehicle ancillary service" includes any one or more  
22 of the following services:  
23  
24

- a. repair or replacement of tires and/or wheels on a motor vehicle damaged as a result of coming into contact with road hazards,
- b. the removal of dents, dings or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacement vehicle body panels, sanding, bonding or painting,
- c. the repair of chips or cracks in or the replacement of motor vehicle windshields as a result of damage caused by road hazards,
- d. the replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen,
- e. payment to or services provided under the terms of an ancillary protection product, or
- f. other services which may be approved by the Commissioner, if not inconsistent with other provisions of this act.

A motor vehicle ancillary service does not include repair and/or replacement of damage to the interior surfaces of a vehicle, or for repair and/or replacement of damage to the exterior paint or finish of a vehicle; however, such coverage may be offered in connection

1 with the sale of a motor vehicle ancillary protection product as  
2 defined in this section;

3 11. "Motor vehicle ancillary protection product" or "ancillary  
4 protection product" means a protective chemical substance, device or  
5 system that:

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

23 For purposes of this section, the term ancillary protection  
24 product shall include, but not be limited to, protective chemicals,

1 alarm systems, body-part-marking products, steering locks, window-  
2 etch products, pedal and ignition locks, fuel and ignition kill  
3 switches and electronic, radio or satellite tracking devices.

4 Ancillary protection product does not include fuel additives, oil  
5 additives or other chemical products applied to the engine,  
6 transmission, or fuel system of a motor vehicle;

7 12. "Net assets" means the amount by which the total assets of  
8 an association, excluding goodwill, franchises, customer lists,  
9 patents or trademarks, and receivables from or advances to officers,  
10 directors, employees, salesmen and affiliated companies, exceed the  
11 total liabilities of the association. For purposes of the Service  
12 Warranty Act, the term "total liabilities" does not include the  
13 capital stock, paid-in capital or retained earning of an association  
14 unless a written guaranty assures repayment and meets the conditions  
15 specified in subparagraph a of paragraph 8 of this section;

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

18 14. "Provider fee" means the total consideration received or to  
19 be received, including sales commissions, by whatever name called,  
20 by a service warranty association for, or related to, the issuance  
21 and delivery of a service warranty, including any charges designated  
22 as assessments or fees for membership, policy, survey, inspection,  
23 or service or other charges. However, a repair charge is not a  
24 provider fee unless it exceeds the usual and customary repair fee



1 charged by the association, provided the repair is made before the  
2 issuance and delivery of the warranty;

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

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

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

- 1           a.    maintenance service contracts under the terms of which  
2                   there are no provisions for such indemnification are  
3                   expressly excluded from this definition,
- 4           b.    those contracts issued solely by the manufacturer,  
5                   distributor, importer or seller of the product, or any  
6                   affiliate or subsidiary of the foregoing entities,  
7                   whereby such entity has contractual liability  
8                   insurance in place, from an insurer licensed in the  
9                   state, which covers one hundred percent (100%) of the  
10                  claims exposure on all contracts written without being  
11                  predicated on the failure to perform under such  
12                  contracts, are expressly excluded from this  
13                  definition,
- 14          c.    the term "service warranty" does not include service  
15                  contracts entered into between consumers and nonprofit  
16                  organizations or cooperatives the members of which  
17                  consist of condominium associations and condominium  
18                  owners, which contracts require the performance of  
19                  repairs and maintenance of appliances or maintenance  
20                  of the residential property,
- 21          d.    the term "service warranty" does not include  
22                  warranties, guarantees, extended warranties, extended  
23                  guarantees, contract agreements or any other service  
24                  contracts issued by a company which performs at least

1           seventy percent (70%) of the service work itself and  
2           not through subcontractors, and which has been selling  
3           and honoring such contracts in Oklahoma for at least  
4           twenty (20) years,

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

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

22          g.   motor service club contracts governed under Article 31  
23          of Title 36 of the Oklahoma Statutes are expressly  
24          excluded from this definition;

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

6        19. "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       20. "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 2.        AMENDATORY        Section 4, Chapter 150, O.S.L.  
15 2012 (15 O.S. Supp. 2016, Section 141.4), is amended to read as  
16 follows:

17       Section 141.4. A. No person in this state shall act as a  
18 service warranty association unless licensed by the Insurance  
19 Commissioner.

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

23       C. An insurer, while authorized to transact property or  
24 casualty insurance in this state, may also transact a service

1 warranty business without additional qualifications or licensure as  
2 required by the Service Warranty Act, but shall be otherwise subject  
3 to the provisions of the Service Warranty Act.

4 D. A service warranty association may appoint an administrator  
5 or other designee to be responsible for any or all of the  
6 administration of service ~~contracts~~ warranties and compliance with  
7 the Service Warranty Act.

8 E. The marketing, sale, offering for sale, issuance, making,  
9 proposing to make and administration of service warranties by  
10 associations and related service warranty sellers, administrators,  
11 and other persons shall be exempt from all provisions of the  
12 Insurance Code.

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

16 SECTION 3. AMENDATORY Section 6, Chapter 150, O.S.L.  
17 2012 (15 O.S. Supp. 2016, Section 141.6), is amended to read as  
18 follows:

19 Section 141.6. A. An association licensed pursuant to the  
20 Service Warranty Act shall maintain a funded, unearned reserve  
21 account, consisting of unencumbered assets, equal to a minimum of  
22 twenty-five percent (25%) of the gross written provider fees  
23 received on all warranty contracts in force, wherever written. In  
24 the case of multiyear contracts which are offered by associations

1 having net assets of less than Five Hundred Thousand Dollars  
2 (\$500,000.00) for which provider fees are collected in advance for  
3 coverage in a subsequent year, one hundred percent (100%) of the  
4 provider fees for such subsequent years shall be placed in the  
5 funded, unearned reserve account. Additionally, an association  
6 establishing such reserve account shall also place in trust with the  
7 Insurance Commissioner a surety bond issued by an authorized surety  
8 having a value of not less than five percent (5%) of the gross  
9 provider fee received, less claims paid, on the sale of the service  
10 warranties for all service ~~contracts~~ warranties issued and in force  
11 in this state, but in no event shall the bond be less than Twenty-  
12 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 that the policy satisfies the  
19 requirements of this section. The insurance shall be obtained from  
20 an insurer that is licensed, registered, or otherwise authorized to  
21 do business in this state, that is rated B++ or better by A.M. Best  
22 Company, Inc., and that meets the requirements of subsection C of  
23 this section. For the purposes of this subsection, the insurance  
24 policy shall contain 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 4.        AMENDATORY        Section 7, Chapter 150, O.S.L.  
3        2012 (15 O.S. Supp. 2016, Section 141.7), is amended to read as  
4        follows:

5        Section 141.7. A. An application for license as a service  
6        warranty association shall be made to, and filed with, the Insurance  
7        Commissioner on printed forms as prescribed and furnished by the  
8        Insurance Commissioner.

9        B. In addition to information relative to its qualifications as  
10       required under ~~Section 5 of this act~~ Section 141.5 of this title,  
11       the Commissioner may require 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 Section 141.4 of this title.

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

15        E. 1. Any entity that claims one or more of the exclusions  
16 from the definition of service warranty provided in paragraph ~~14~~ 17  
17 of Section ~~2~~ 141.2 of this ~~act~~ title shall file audited financial  
18 statements and other information as requested by the Commissioner to  
19 document and verify that the contracts of the entity are not  
20 included within the definition of service warranty. Financial  
21 statements are not required to be filed by an entity claiming one of  
22 the exclusions set forth in subparagraphs (a) and (b) of paragraph  
23 17 of Section 141.2 of this title.

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

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

17        4. Other information requested by the Commissioner may include,  
18 but is not limited to, SEC filings, audited financial statements of  
19 affiliates, and organizational data and organizational charts.  
20 Financial statements shall not be required to be filed by an entity  
21 claiming one of the exclusions set forth in subparagraphs (a) and  
22 (b) of paragraph 17 of Section 141.2 of this title.  
23  
24

SECTION 5. AMENDATORY 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), is amended to read as follows:

Section 141.13. A. No service warranty form or related form shall be issued or used in this state unless the form has been filed with ~~and approved by~~ the Insurance Commissioner. Service warranty forms shall not be subject to prior approval and shall be filed with the Insurance Commissioner for informational purposes only.

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

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

~~D.~~ C. Service ~~contracts~~ warranties shall state the name and address of the service warranty association and shall identify any

1 administrator if different from the service warranty association,  
2 the service ~~contract~~ warranty seller and the service ~~contract~~  
3 warranty holder to the extent that the name of the service ~~contract~~  
4 warranty holder has been furnished by the service ~~contract~~ warranty  
5 holder. For service ~~contracts~~ warranties issued on and after July  
6 1, ~~2016~~ 2017, the identity of the service warranty association and  
7 its license number shall be preprinted on the service ~~contract~~  
8 warranty or added at the time of sale so consumers can clearly  
9 identify the obligor of the service warranty. Information to be  
10 printed at the time of sale shall be indicated as such at the time  
11 the service warranty is filed for approval and a "Jane Doe" specimen  
12 shall accompany the service warranty illustrating how the service  
13 warranty will look after printing.

14 ~~E. D.~~ The Commissioner shall ~~disapprove any form filed pursuant~~  
15 ~~to this section if~~ have the authority to immediately order a service  
16 warranty association to stop using any service warranty contract if  
17 the Commissioner determines that the form:

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

22 ~~F. E.~~ The Insurance Commissioner may, by order, exempt from the  
23 requirements of this section for so long as he or she deems proper  
24 any document or form or type thereof as specified in such order, to

1 which, in his or her discretion this section may not practicably be  
2 applied, or the filing ~~and approval~~ of which ~~are~~ is, in his or her  
3 opinion, not desirable or necessary for the protection of the  
4 public.

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

8 Section 141.14. A. In addition to the license fees provided in  
9 the Service Warranty Act for service warranty associations each  
10 service warranty association and insurer shall annually, on or  
11 before the first day of May, file with the Insurance Commissioner  
12 its annual statement in the form prescribed by the Commissioner  
13 showing all gross written provider fees or assessments received by  
14 it in connection with the issuance of service warranties in this  
15 state during the preceding calendar year and other relevant  
16 financial information as deemed necessary by the Commissioner, using  
17 accounting principles which will enable the Commissioner to  
18 ascertain whether the financial requirements set forth in Section 7  
19 141.7 of this ~~act~~ title have been satisfied.

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

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

6 D. Provider fees and assessments received by associations and  
7 insurers for service warranties shall not be subject to the premium  
8 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,  
9 but shall be subject to an administrative fee of equal to two  
10 percent (2%) of the gross provider fee received on the sale of all  
11 service ~~contracts~~ warranties issued in this state during the  
12 preceding calendar quarter. The fees shall be paid quarterly to the  
13 Insurance Commissioner. However, licensed associations, licensed  
14 insurers and entities with applications for licensure as a service  
15 warranty association pending with the Department that have  
16 contractual liability insurance in place as of March 31, 2009, from  
17 an insurer which satisfies the requirements of subsections B and C  
18 of Section 7 141.7 of this ~~act~~ title and which covers one hundred  
19 percent (100%) of the claims exposure of the association or insurer  
20 on all contracts written may elect to pay an annual administrative  
21 fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent  
22 administrative fee.

SECTION 7. AMENDATORY 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), is amended to read as follows:

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

SECTION 8. AMENDATORY Section 26, Chapter 150, O.S.L.

2012, as amended by Section 2, Chapter 64, O.S.L. 2016 (15 O.S. Supp. 2016, Section 141.26), is amended to read as follows:

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

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

- a. misrepresents the benefits, advantages, conditions, or terms of any service warranty contract,



- 1           b.    is misleading or is a misrepresentation as to the  
2               financial condition of any person,
- 3           c.    uses any name or title of any contract misrepresenting  
4               the true nature thereof, ~~or~~
- 5           d.    is a misrepresentation for the purpose of inducing, or  
6               tending to induce, the lapse, forfeiture, exchange,  
7               conversion, or surrender of any service warranty  
8               contract, or
- 9           e.    is false, deceptive or misleading with respect to:
- 10               (1)   the service warranty association's affiliation  
11               with a motor vehicle manufacturer,
- 12               (2)   the service warranty association's possession of  
13               information regarding a motor vehicle owner's  
14               current motor vehicle manufacturer's original  
15               equipment warranty,
- 16               (3)   the expiration of a motor vehicle owner's current  
17               motor vehicle manufacturer's original equipment  
18               warranty, or
- 19               (4)   a requirement that a motor vehicle owner register  
20               for a new service warranty with such provider in  
21               order to maintain coverage under the motor  
22               vehicle owner's current service warranty or  
23               manufacturer's original equipment warranty;
- 24

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

- 5            a. in a newspaper, magazine, or other publication,
- 6            b. in the form of a notice, circular, pamphlet, letter,  
7                      or poster,
- 8            c. over any radio or television station, or
- 9            d. in any other way,

10 an advertisement, announcement, or statement containing any  
11 assertion, representation, or statement with respect to the business  
12 of service warranty, which assertion, representation, or statement  
13 is untrue, deceptive, or misleading;

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

21        4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- 22            a. filing with any supervisory or other public official,
- 23            b. making, publishing, disseminating, or circulating,
- 24            c. delivering to any person,

- d. placing before the public,
- e. causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement, or
- f. making any false entry of a material fact in any book, report, or statement of any person;

5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- a. attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder,
- b. making a material misrepresentation to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract, or
- c. committing or performing with such frequency as to indicate a general business practice any of the following practices:
  - (1) failure properly to investigate claims,
  - (2) misrepresentation of pertinent facts or contract provisions relating to coverages at issue,

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

14 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

15 Failing to maintain a record of each complaint received for a three-  
16 year period after the date of the receipt of the written complaint;

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

18 issue a contract solely because of an individual's race, color,  
19 creed, marital status, sex, or national origin; and

20 8. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE -

21 Failing to provide a consumer with a complete sample copy of the  
22 terms and conditions of the service warranty prior to before the  
23 time of sale upon a request for the same by the consumer. A service  
24 warranty association may comply with the provisions of this

1 paragraph by providing the consumer with a sample copy of the terms  
2 and conditions of the warranty contract or by directing the consumer  
3 to a website that displays a complete sample of the terms and  
4 conditions of the contract.

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

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7 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/29/2017 - DO  
8 PASS.  
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