

1 ENGROSSED SENATE  
2 BILL NO. 427

By: Quinn of the Senate

and

Mulready of the House

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5  
6 An Act relating to service warranties; amending  
7 Section 2, Chapter 150, O.S.L. 2012, as amended by  
8 Section 2, Chapter 418, O.S.L. 2014 (15 O.S. Supp.  
9 2016, Section 141.2), which relates to definitions;  
10 modifying definitions; amending Section 4, Chapter  
11 150, O.S.L. 2012 (15 O.S. Supp. 2016, Section 141.4),  
12 which relates to licensure and exemptions; modifying  
13 references from service contracts to service  
14 warranties; amending Section 6, Chapter 150, O.S.L.  
15 2012 (15 O.S. Supp. 2016, Section 141.6), which  
16 relates to unearned reserve accounts; amending  
17 Section 7, Chapter 150, O.S.L. 2012 (15 O.S. Supp.  
18 2016, Section 141.7), which relates to application  
19 for licenses; updating statutory references;  
20 exempting certain entities from filing financial  
21 statements; requiring certain entities to make  
22 certain filings; amending Section 13, Chapter 150,  
23 O.S.L. 2012, as amended by Section 1, Chapter 64,  
24 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

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

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

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

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

- 15 1. "Commissioner" means the Insurance Commissioner;
- 16 2. "Consumer product" means tangible personal property  
17 primarily used for personal, family, or household purposes;
- 18 3. "Department" means the Insurance Department;
- 19 4. "Gross income" means the total amount of revenue received in  
20 connection with business-related activity;
- 21 5. "Gross written provider fee" means the total amount of  
22 consideration, inclusive of commissions, paid by a consumer for a  
23 service warranty issued in this state;
- 24 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 12 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),  
24

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 meet or exceed the net  
15 assets requirement as provided in division (1) of  
16 this subparagraph and that the net assets of the  
17 guaranteeing organization exceed the amount of  
18 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 141.14 of this title, 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. "Motor vehicle ancillary service" includes any one or more  
18 of the following services:

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

22 b. the removal of dents, dings or creases on a motor  
23 vehicle that can be repaired using the process of  
24 paintless dent removal without affecting the existing

1 paint finish and without replacement vehicle body  
2 panels, sanding, bonding or painting,

3 c. the repair of chips or cracks in or the replacement of  
4 motor vehicle windshields as a result of damage caused  
5 by road hazards,

6 d. the replacement of a motor vehicle key or key-fob in  
7 the event that the key or key-fob becomes inoperable  
8 or is lost or stolen,

9 e. payment to or services provided under the terms of an  
10 ancillary protection product, or

11 f. other services which may be approved by the  
12 Commissioner, if not inconsistent with other  
13 provisions of this act.

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

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

23 a. is installed on or applied to a motor vehicle,  
24

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

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

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

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

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

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



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  
24

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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24

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.

24

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. Service warranty  
23 forms shall not be subject to prior approval and shall be filed with  
24 the Insurance Commissioner for informational purposes only.

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

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

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

1 identify the obligor of the service warranty. Information to be  
2 printed at the time of sale shall be indicated as such at the time  
3 the service warranty is filed for approval and a "Jane Doe" specimen  
4 shall accompany the service warranty illustrating how the service  
5 warranty will look after printing.

6 ~~E. D.~~ The Commissioner shall ~~disapprove any form filed pursuant~~  
7 ~~to this section if~~ have the authority to immediately order a service  
8 warranty association to stop using any service warranty contract if  
9 the Commissioner determines that the form:

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

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

21 SECTION 6. AMENDATORY Section 14, Chapter 150, O.S.L.  
22 2012 (15 O.S. Supp. 2016, Section 141.14), is amended to read as  
23 follows:  
24

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

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

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

22 D. Provider fees and assessments received by associations and  
23 insurers for service warranties shall not be subject to the premium  
24 tax provided in Section 624 of Title 36 of the Oklahoma Statutes,

1 but shall be subject to an administrative fee of equal to two  
2 percent (2%) of the gross provider fee received on the sale of all  
3 service ~~contracts~~ warranties issued in this state during the  
4 preceding calendar quarter. The fees shall be paid quarterly to the  
5 Insurance Commissioner. However, licensed associations, licensed  
6 insurers and entities with applications for licensure as a service  
7 warranty association pending with the Department that have  
8 contractual liability insurance in place as of March 31, 2009, from  
9 an insurer which satisfies the requirements of subsections B and C  
10 of Section 7 141.7 of this ~~act~~ title and which covers one hundred  
11 percent (100%) of the claims exposure of the association or insurer  
12 on all contracts written may elect to pay an annual administrative  
13 fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent  
14 administrative fee.

15 SECTION 7. AMENDATORY Section 18, Chapter 150, O.S.L.  
16 2012, as amended by Section 3, Chapter 418, O.S.L. 2014 (15 O.S.  
17 Supp. 2016, Section 141.18), is amended to read as follows:

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

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

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

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

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



1           (2) the service warranty association's possession of  
2           information regarding a motor vehicle owner's  
3           current motor vehicle manufacturer's original  
4           equipment warranty,

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

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

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

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

22 an advertisement, announcement, or statement containing any  
23 assertion, representation, or statement with respect to the business  
24

1 of service warranty, which assertion, representation, or statement  
2 is untrue, deceptive, or misleading;

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

10 4. FALSE STATEMENTS AND ENTRIES - Knowingly:

- 11 a. filing with any supervisory or other public official,
- 12 b. making, publishing, disseminating, or circulating,
- 13 c. delivering to any person,
- 14 d. placing before the public,
- 15 e. causing, directly or indirectly, to be made,  
16 published, disseminated, circulated, delivered to any  
17 person, or placed before the public, any false  
18 statement, or
- 19 f. making any false entry of a material fact in any book,  
20 report, or statement of any person;

21 5. UNFAIR CLAIM SETTLEMENT PRACTICES -

- 22 a. attempting to settle claims on the basis of an  
23 application or any other material document which was  
24

1 altered without notice to, or knowledge or consent of,  
2 the warranty holder,

- 3 b. making a material misrepresentation to the warranty  
4 holder for the purpose and with the intent of  
5 effecting settlement of such claims, loss, or damage  
6 under such contract on less favorable terms than those  
7 provided in, and contemplated by, such contract, or  
8 c. committing or performing with such frequency as to  
9 indicate a general business practice any of the  
10 following practices:

- 11 (1) failure properly to investigate claims,  
12 (2) misrepresentation of pertinent facts or contract  
13 provisions relating to coverages at issue,  
14 (3) failure to acknowledge and act promptly upon  
15 communications with respect to claims,  
16 (4) denial of claims without conducting reasonable  
17 investigations based upon available information,  
18 (5) failure to affirm or deny coverage of claims upon  
19 written request of the warranty holder within a  
20 reasonable time after proof-of-loss statements  
21 have been completed, or  
22 (6) failure to promptly provide a reasonable  
23 explanation to the warranty holder of the basis  
24 in the contract in relation to the facts or

1 applicable law for denial of a claim or for the  
2 offer of a compromise settlement;

3 6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS -

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

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

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

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

10 Failing to provide a consumer with a complete sample copy of the  
11 terms and conditions of the service warranty prior to before the  
12 time of sale upon a request for the same by the consumer. A service  
13 warranty association may comply with the provisions of this  
14 paragraph by providing the consumer with a sample copy of the terms  
15 and conditions of the warranty contract or by directing the consumer  
16 to a website that displays a complete sample of the terms and  
17 conditions of the contract.

18 SECTION 9. This act shall become effective November 1, 2017.  
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24

1 Passed the Senate the 14th day of March, 2017.

2  
3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2017.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives