An Act

ENROLLED SENATE
BILL NO. 1475

By: Johnson (Rob) of the Senate

and

Jordan of the House

An Act relating to service warranties; creating the Service Warranty Act; providing short title; defining terms; requiring the Insurance Commissioner to enforce the provisions of the Service Warranty Act; providing procedures relating to licensure; setting license fee; specifying conditions to be met for issuance or renewal of license; requiring certain association to maintain a reserve account; specifying requirements of certain account; allowing certain insurance policy to be in lieu of establishing an unearned reserve or demonstrating the minimum writing ratio; specifying requirements of insurance policy; providing requirements for application for license; allowing for annual renewal upon payment of fee; allowing license to be revoked or suspended under certain conditions; providing procedures relating to the suspension or revocation of license; specifying period of suspension; authorizing the Commissioner to impose a fine in lieu of suspension or revocation; providing procedures related to the filing of forms; requiring certain information be contained in service warranty contracts; requiring the Commissioner to disapprove any form under certain conditions; requiring an annual statement be filed by service warranty associations; authorizing fine to be levied for untimely filing; requiring provider fees and assessments to be subject to an administrative fee in lieu of the premium tax; authorizing an annual administrative fee in lieu of the administrative fee; subjecting service warranty association to periodic examination by the Commissioner; requiring licensed service warranty associations to maintain certain

records; requiring service warranty associations to designate an agent for service of process; requiring provision of the name and address of each sales representative; authorizing administrative penalty in lieu of suspension, revocation or refusal to renew; specifying amounts of penalties; setting time limit for payment of penalties; specifying that a service warranty association is not authorized to transact any insurance business; prohibiting an insurer or service warranty association from acting as a fronting company for unauthorized insurer or service warranty association; defining term; requiring a service warranty to contain a disclosure statement; directing the Commissioner to supervise any dissolution or liquidation of an association; authorizing criminal penalty for certain actions; allowing civil actions to be brought against certain persons; allowing collection of costs and attorney fees; specifying that a service warranty shall not give rise to certain actions in tort; construing certain provision; specifying that civil action is not authorized against the Insurance Commissioner or Insurance Department; prohibiting unfair or deceptive trade practices; defining unfair or deceptive trade practices; authorizing Commissioner to examine or investigate unfair or deceptive trade practices; allowing the Commissioner to conduct certain hearings in accordance with the Administrative Procedures Act; providing for service of notice; requiring the Commissioner to enter a final order; requiring the issuance of a cease and desist order if it is has been determined that certain practices occurred; allowing the Commissioner to order certain penalties; authorizing the Commissioner to ask for an injunction under certain conditions; specifying that provisions of the Service Warranty Act are cumulative; declaring that certain records are privileged and confidential; amending 15 O.S. 2011, Section 140.1, which relates to debt cancellation agreements; specifying that a debt cancellation agreement shall not give rise to certain actions in tort; construing certain provision; amending 36 O.S. 2011, Sections 6651 and

6652, which relate to the Vehicle Protection Product Act; updating reference; amending 36 O.S. 2011, Section 6670, which relates to insurance coverage for portable electronics; updating statutory reference; amending 36 O.S. 2011, Sections 6751 and 6753, which relate to the Oklahoma Home Service Contract Act; modifying the name of the Service Warranty Insurance Act; repealing 36 O.S. 2011, Sections 6601, 6602, 6603, 6604, 6605, 6607, 6608, 6609, 6610, 6611, 6612, 6613, 6614, 6615, 6616, 6617, 6618, 6620, 6626, 6627, 6628, 6629, 6630, 6631, 6632, 6633, 6634, 6635, 6636, 6637, 6638 and 6639, which relate to the Service Warranty Insurance Act; providing for codification; and providing an effective date.

SUBJECT: Service warranties

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

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

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

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

As used in the Service Warranty Act:

1. "Commissioner" means the Insurance Commissioner;

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

3. "Department" means the Insurance Department;

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

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

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

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

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

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

(1) has been in continuous operation for ten (10) years or more and has net assets in excess of Five Hundred Million Dollars ($500,000,000.00),

(2) submits a guarantee on a form acceptable to the Insurance Commissioner that contains a provision which requires that the guarantee be irrevocable, unless the guaranteeing organization can demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not

result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,

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

(4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, with the annual statement required by Section 14 of this act, a statement from an independent certified public accountant attesting that the net assets of the guaranteeing organization meet or exceed the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and

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

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

c. the association has knowingly overvalued its assets;

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

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

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

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

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

14. "Service warranty" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair or replacement of property or indemnification for repair or replacement for the operational or structural failure due to a defect or failure in materials or workmanship, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, failure due to normal wear and tear, towing, rental and emergency road service, road hazard, power surge, and accidental damage from handling or as otherwise provided for in the contract or agreement; however:

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

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

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

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

e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts, whether or not such service contracts otherwise meet the definition of service warranty, issued by a company which has net assets in excess of One Hundred Million Dollars ($100,000,000.00). A service warranty association may use the net assets of a parent company to qualify under this section if the net assets of the company issuing the policy total at least Twenty-five Million Dollars ($25,000,000.00) and the parent company maintains net assets of at least Seventy-five Million Dollars ($75,000,000.00) not

including the net assets held by the service warranty associations, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Is a solvent association;

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

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

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

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

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

A. An association licensed pursuant to the Service Warranty Act shall maintain a funded, unearned reserve account, consisting of unencumbered assets, equal to a minimum of twenty-five percent (25%) of the gross written provider fees received on all warranty contracts in force, wherever written. In the case of multiyear contracts which are offered by associations having net assets of less than Five Hundred Thousand Dollars ($500,000.00) for which provider fees are collected in advance for coverage in a subsequent year, one hundred percent (100%) of the provider fees for such subsequent years shall be placed in the funded, unearned reserve account. Additionally, an association establishing such reserve account shall also place in trust with the Insurance Commissioner a surety bond issued by an authorized surety having a value of not less than five percent (5%) of the gross provider fee received, less claims paid, on the sale of the service warranties for all service contracts issued and in force in this state, but in no event shall the bond be less than Twenty-five Thousand Dollars ($25,000.00).

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

1. In the event that the service warranty association is unable to fulfill its obligation under contracts issued in this state for

any reason, including insolvency, bankruptcy, or dissolution, the insurer will pay losses and unearned provider fees under such plans directly to the person making a claim under the contract;

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

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

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

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

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

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

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

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

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

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

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

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

1. A complete review of financial condition;

2. An increase in deposit;

3. A suspension of any new writings; or

4. Capital infusion into the business.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Any entity approved for an exclusion exemption as provided by paragraph 14 of Section 2 of this act may be required by the Commissioner to provide subsequent audited financial statements and other information ascertained by the Commissioner to be necessary to

determine continued qualification for an exclusion exemption as provided by paragraph 14 of Section 2 of this act.

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

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

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

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

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

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

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

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

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

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

5. Is affiliated with and under the same general management or interlocking directorate or ownership as another service warranty association which transacts direct warranties in this state without having a license; or

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

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

1. The association is insolvent or impaired;

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

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

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

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

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

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

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

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

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

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

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

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

If the Insurance Commissioner finds that one or more grounds exist for the discretionary revocation or suspension of a

certificate of authority issued under the Service Warranty Act, the Commissioner may, in lieu of such suspension or revocation, impose a fine upon the insurer or service warranty association in an amount not to exceed One Thousand Dollars ($1,000.00) per violation; however, if it is found that an insurer or service warranty association has knowingly and willfully violated a lawful rule or order of the Commissioner or any provision of the Service Warranty Act, the Commissioner may impose a fine upon the insurer or association in an amount not to exceed Ten Thousand Dollars ($10,000.00) for each violation.

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

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.

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

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

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

1. Violates the Service Warranty Act;

2. Is misleading in any respect; or

3. Is reproduced so that any material provision is substantially illegible.

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

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

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

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

D. Provider fees and assessments received by associations and insurers for service warranties shall not be subject to the premium

tax provided in Section 624 of Title 36 of the Oklahoma Statutes, but shall be subject to an administrative fee of equal to two percent (2%) of the gross provider fee received on the sale of all service contracts issued in this state during the preceding calendar quarter. The fees shall be paid quarterly to the Insurance Commissioner. However, licensed associations, licensed insurers and entities with applications for licensure as a service warranty association pending with the Department that have contractual liability insurance in place as of March 31, 2009, from an insurer which satisfies the requirements of subsections B and C of Section 7 of this act and which covers one hundred percent (100%) of the claims exposure of the association or insurer on all contracts written may elect to pay an annual administrative fee of Three Thousand Dollars ($3,000.00) in lieu of the two-percent administrative fee.

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

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

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

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

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

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

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

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

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

Service warranty associations shall be required to designate an agent in this state for service of process.

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

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

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

A. If, pursuant to procedures provided in the Service Warranty Act, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under the Service Warranty Act, on a first offense and except when such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension,

revocation, or refusal, an administrative penalty for each violation in the amount of One Hundred Dollars ($100.00), or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related. An administrative penalty imposed under this section shall not exceed Five Thousand Dollars ($5,000.00) in the aggregate for all nonwillful violations of a similar nature or One Hundred Fifty Thousand Dollars ($150,000.00) in the aggregate for all willful violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation occurs within a single license or filing year and consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of this act occurred.

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

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.20 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

Except as otherwise provided in the Service Warranty Act, any person who knowingly makes a false or otherwise fraudulent application for license or registration, or who knowingly violates any provision of the Service Warranty Act, in addition to being subject to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, shall be subject to criminal prosecution and if convicted shall be guilty of a misdemeanor. Each instance of violation shall be considered a separate offense.

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

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

B. A service warranty and those contracts specified in subparagraphs a through e of paragraph 14 of Section 141.2 of Title 15 of the Oklahoma Statutes shall not be deemed to create a special relationship between the parties which would give rise to an action in tort to recover for breach of the duty of good faith and fair dealing. This section shall not be construed to preclude a breach of contract action for failure of the parties to comply with the implied duty of good faith and fair dealing in carrying out their obligations as set forth in the service warranty.

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

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

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

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

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,

b. is misleading or is a misrepresentation as to the financial condition of any person,

c. uses any name or title of any contract misrepresenting the true nature thereof, or

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

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

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

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

c. over any radio or television station, or

d. in any other way,

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

3. DEFAMATION - Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating

of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated to injure such person;

4. FALSE STATEMENTS AND ENTRIES - Knowingly:

   a. filing with any supervisory or other public official,

   b. making, publishing, disseminating, or circulating,

   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,

(3) failure to acknowledge and act promptly upon communications with respect to claims,

(4) denial of claims without conducting reasonable investigations based upon available information,

(5) failure to affirm or deny coverage of claims upon written request of the warranty holder within a reasonable time after proof-of-loss statements have been completed, or

(6) failure to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

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

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

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

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

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

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

B. A statement of charges, notice, order, or other process may be served by anyone duly authorized by the Insurance Commissioner, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at the residence or principal office or place of business of the person. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

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

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

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

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

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

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

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

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

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

In addition to the penalties and other enforcement provisions of the Service Warranty Act, if any person violates any provision of Section 4 or Section 18 of this act or any rule adopted pursuant thereto, the Insurance Commissioner may resort to a proceeding for injunction in the district court of the county where such person resides or has its principal place of business, and therein apply for such temporary and permanent orders as the Commissioner may deem necessary to restrain the applicable person from engaging in any such activities, until such person has complied with the applicable provision or rule.

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

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

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

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

SECTION 33. AMENDATORY 15 O.S. 2011, Section 140.1, is amended to read as follows:

Section 140.1. A. A "debt cancellation agreement" means a loan term or contractual arrangement modifying loan or retail installment contract terms under which a lender or other creditor agrees to cancel all or part of an obligation of the borrower to repay an extension of credit from the lender or other creditor upon the occurrence of a specified event. The agreement may be separate from or a part of other loan or retail installment contract documents.

B. A debt cancellation agreement shall not be considered a contract of, or for, insurance if it is not a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies, but merely cancels amounts owed by a borrower under a loan, retail installment contract or other credit agreement.

C. A debt cancellation agreement shall not be deemed to create a special relationship between the parties which would give rise to an action in tort to recover for breach of the duty of good faith and fair dealing. This section shall not be construed to preclude a breach of contract action for failure of the parties to comply with the implied duty of good faith and fair dealing in carrying out their obligations as set forth in the agreement.

SECTION 34. AMENDATORY 36 O.S. 2011, Section 6651, is amended to read as follows:

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

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

2. "Commissioner" means the Insurance Commissioner;

3. "Department" means the Insurance Department;

4. "Incidental costs" means expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. Incidental costs may include insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, vehicle excise taxes, vehicle registration fees, certificate of title fees, transaction fees and mechanical inspection fees;

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

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

a. is installed on or applied to a vehicle,

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

c. includes a written warranty.

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

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

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

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

10. "Warranty reimbursement insurance policy" means a policy of insurance that is issued to the vehicle protection product warrantor to provide reimbursement to the warrantor or to pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties issued by the warrantor.

SECTION 35. AMENDATORY 36 O.S. 2011, Section 6652, is amended to read as follows:

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

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

C. Service contract providers who do not sell vehicle protection products are not subject to the requirements of the Vehicle Protection Product Act and sales of the vehicle protection

products are exempt from the requirements of the Service Warranty ~~Insurance~~ Act.

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

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

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

1. "Commissioner" means the Insurance Commissioner;

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

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

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

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

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

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

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

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

7. "Portable electronics transaction" means:

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

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

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

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

SECTION 37. AMENDATORY 36 O.S. 2011, Section 6751, is amended to read as follows:

Section 6751. A. The purpose of the Oklahoma Home Service Contract Act is to create an independent legal framework within which home service contracts are defined, may be sold and are regulated in this state. The Oklahoma Home Service Contract Act declares that home service contracts, as defined in Section ~~3~~ 6752 of this ~~act~~ title, are not insurance and not otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act requires simple registration, financial assurance options and enforcement by the Insurance Commissioner. Proper registration under the Oklahoma Home Service Contract Act exempts applicability under the Service Warranty ~~Insurance~~ Act, which may regulate extended warranty, retail, automobile and agreements not defined in the Oklahoma Home Service Contract Act. Nothing in the Service Warranty ~~Insurance~~ Act is changed or amended by the Oklahoma Home Service Contract Act.

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

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

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

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

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

SECTION 38. AMENDATORY 36 O.S. 2011, Section 6753, is amended to read as follows:

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

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

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

B. Each provider of home service contracts sold in this state shall file a registration with, and on a form prescribed by, the Insurance Commissioner consisting of their name, full corporate physical street address, telephone number, contact person and a designated person in this state for service of process. Each provider shall pay to the Commissioner a fee in the amount of One Thousand Two Hundred Dollars ($1,200.00) upon initial registration and every three (3) years thereafter. Each provider shall pay to the Commissioner an Antifraud Assessment Fee of Two Thousand Two Hundred Fifty Dollars ($2,250.00) upon initial registration and every three (3) years thereafter. The registration need only be updated by written notification to the Commissioner if material changes occur in the registration on file. A proper registration is de facto a license to conduct business in Oklahoma and may be suspended as provided in Section ~~6~~ 6755 of this ~~act~~ title. Fees

received from home service contract providers shall not be subject to any premium tax, but shall be subject to an administrative fee equal to two percent (2%) of the gross fees received on the sale of all home service contracts issued in this state during the preceding calendar quarter. The fees shall be paid quarterly to the Commissioner and submitted along with a report on a form prescribed by the Commissioner. However, service contract providers may elect to pay an annual administrative fee of Three Thousand Dollars ($3,000.00) in lieu of the two-percent administrative fee, if the provider maintains an insurance policy as provided in paragraph 3 of subsection C of this section.

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

1. a. maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the Commissioner, and

   b. place in trust with the Commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than Twenty-five Thousand Dollars ($25,000.00), consisting of one of the following:

      (1) a surety bond issued by an authorized surety,

      (2) securities of the type eligible for deposit by authorized insurers in this state,

      (3) cash,

(4) a letter of credit issued by a qualified financial institution, or

(5) another form of security prescribed by rule promulgated by the Commissioner;

2. a. maintain, or together with its parent company maintain, a net worth or stockholders' equity of Twenty-five Million Dollars ($25,000,000.00), excluding goodwill, intangible assets, customer lists and affiliated receivables, and

b. upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's financial statements, which shows a net worth of the provider or its parent company of at least Twenty-five Million Dollars ($25,000,000.00) based upon Generally Accepted Accounting Principles (GAAP) accounting standards. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state; or

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

a. in the event that the provider is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or

dissolution, the insurer shall pay losses and unearned premiums under such plans directly to the person making the claim under the contract,

b. the insurer issuing the insurance policy shall assume full responsibility for the administration of claims in the event of the inability of the provider to do so, and

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

D. The insurer providing the insurance policy used to satisfy the financial responsibility requirements of paragraph 3 of subsection C of this section shall meet one of the following standards:

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

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

b. annually file copies of the audited financial statements of the insurer, its National Association of Insurance Commissioners (NAIC) Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

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

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

b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written

premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and

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

E. Except for the registration requirements in subsection B of this section, providers, administrators and other persons marketing, selling or offering to sell home service contracts are exempt from any licensing requirements of this state and shall not be subject to other registration information or security requirements. Home service contract providers as defined in Section ~~3~~ 6752 of this ~~act~~ title and properly registered under this law are exempt from any treatment pursuant to the Service Warranty ~~Insurance~~ Act. Home service contract providers applying for registration under the Oklahoma Home Service Contract Act that have not been registered in the preceding twelve (12) months under the ~~act~~ Oklahoma Home Service Contract Act may be subject to a thirty-day prior review before their registration is deemed complete. Said applications shall be deemed complete after thirty (30) days unless the Commissioner takes action in that period under Section ~~6~~ 6755 of this ~~act~~ title, for cause shown, to suspend their registration.

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

SECTION 39. REPEALER 36 O.S. 2011, Sections 6601, 6602, 6603, 6604, 6605, 6607, 6608, 6609, 6610, 6611, 6612, 6613, 6614, 6615, 6616, 6617, 6618, 6620, 6626, 6627, 6628, 6629, 6630, 6631, 6632, 6633, 6634, 6635, 6636, 6637, 6638 and 6639, are hereby repealed.

SECTION 40. This act shall become effective November 1, 2012.

Passed the Senate the 6th day of March, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 19th

day of April, **20** 12,

at 1:39 **o'clock** P**M.**

By: Jessica R Byers

Approved by the Governor of the State of Oklahoma the 25th **day of**

April, **20** 12, **at** 4:26 **o'clock** P**M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

25th **day of** April, **20** 12,

at 5:20 **o'clock** P.**M.**

By: