OKLAHOMA STATUTES
TITLE 15. CONTRACTS

§15-1. Contract defined.

A contract is an agreement to do or not to do a certain thing.

R.L.1910, § 875.

§15-2. Requisites of a contract.

It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. Sufficient cause or consideration.

R.L.1910, § 876.

§15-11. Persons authorized to contract.

All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights, however, persons sentenced to imprisonment under the Department of Corrections for any term, during confinement under said sentence, may make employment contracts, subject to the approval of the Director of the Department of Corrections, when this benefits the vocational training or release preparation of the prisoner; provided however, such persons during

confinement shall not be eligible to receive benefits under the unemployment compensation law.
R.L.1910, § 877; Laws 1976, c. 163, § 1, emerg. eff. June 1, 1976.

§15-12. Capacity of certain classes.
Minors and persons of unsound mind have only such capacity as is defined by the statutes of this State.
R.L. 1910, Sec. 878.

§15-13. Minors defined - Computing period of minority.
Minors, except as otherwise provided by law, are persons under eighteen (18) years of age.
The period thus specified must be calculated from the first minute of the day on which a person is born to the same minute of the corresponding day completing the period of minority.
R.L.1910, § 932.

§15-14. Adults.
All other persons are adults.
R.L.1910, § 880.

§15-15. Status of unborn child.
A child conceived, but not born, is to be deemed an existing person so far as may be necessary for its interest in the event of its subsequent birth.
R.L.1910, § 881.

§15-16. Persons of unsound mind, who are.
Persons of unsound mind within the meaning of this chapter are incapacitated persons or partially incapacitated persons, as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes.
R.L. 1910, § 882. Amended by Laws 1998, c. 246, § 4, eff. Nov. 1, 1998.

§15-17. Disabilities of minor - What contracts prohibited.
A minor cannot give a delegation of power, nor make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control, except as otherwise specially provided.
R.L.1910, § 883; Laws 1972, c. 221, § 2, eff. Aug. 1, 1972.

§15-18. Contracts which minor may make.
A minor may make any other contract than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this chapter.
R.L.1910, § 884.

§15-19. Disaffirmance of minor's contract.

In all cases other than those specified herein, the contract of a minor may be disaffirmed by the minor himself, either before his majority or within one (1) year's time afterwards; or, in case of his death within that period, by his heirs or personal representatives. Provided, that any minor between the ages of sixteen (16) and eighteen (18) who has paid for any repairing, supplying or equipping on any type of a motor vehicle may disaffirm said contract in like manner only by restoring the consideration to the party from whom it was received.

R.L.1910, § 885; Laws 1965, c. 294, § 1, emerg. eff. June 24, 1965; Laws 1972, c. 221, § 3, eff. Aug. 1, 1972.

§15-20. Necessaries - What contracts may not be disaffirmed.

A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

R.L.1910, § 886.

§15-21. Disaffirmance of contracts authorized by statute.

A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

R.L.1910, § 887.

§15-22. Persons without understanding - Contracts - Necessaries.

A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary to his support or the support of his family.

R.L.1910, § 888.

§15-23. Rescission by person of unsound mind.

A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission without prejudice to the rights of third persons, as provided in the article on extinction of contracts.

R.L.1910, § 889.

§15-24. Judicial determination of incapacity, contracts after - Wills after restoration.

After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is

judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.
R.L.1910, § 890.

§15-25. Civil liability of minors and incompetents.
A minor, or a person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any other person.
R.L.1910, § 891.

§15-26. Exemplary damages, minors' and incompetents' liability for.
A minor or person of unsound mind cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.
R.L.1910, § 892.

§15-27. Minor may enforce rights by civil action - Guardian.
A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.
R.L.1910, § 893.

§15-28. Identity of parties to contract.
It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.
R.L.1910, § 894.

§15-29. Beneficiary may enforce.
A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.
R.L.1910, § 895.

§15-31. Uniform Minor Student Capacity to Borrow Act.
This act may be cited as the Uniform Minor Student Capacity to Borrow Act.
Laws 1970, c. 215, § 1, emerg. eff. April 15, 1970.

§15-32. Definitions.
As used in this act:
(1) "person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
(2) "educational institution" means any university, college, community college, junior college, high school, technical, vocational or professional school, wherever located, approved or accredited by that officer, department, board, agency or other official entity of

this state, authorized under law to approve or to accredit for educational purposes that particular type of university, college, school or institution of learning, or, in the absence, as to the particular type of institution, of any such officer, department, board, agency or other official entity, by the State Board of Education, for the purposes of this act, or by the appropriate official, department or agency of the state in which the institution is located; and

(3) "educational loan" means a loan or assistance for the purpose of directly furthering the obligor's education at an educational institution.

Laws 1970, c. 215, § 2, emerg. eff. April 15, 1970.

§15-33. Enforceable obligations.

Any written obligation signed by a minor who is (a) sixteen (16) years of age, with written approval of his parent or guardian, or (b) sixteen (16) years of age and does not reside with a parent or guardian, in consideration of an educational loan received by him from any person, is enforceable as if he were an adult at the time of execution, but only if, prior to the making of the educational loan, the educational institution has certified in writing to the person making the educational loan that the minor is enrolled, or has been accepted for enrollment, in the educational institution.

Laws 1970, c. 215, § 3, emerg. eff. April 15, 1970; Laws 1972, c. 221, § 4, eff. Aug. 1, 1972.

§15-34. Construction.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Laws 1970, c. 215, § 5, emerg. eff. April 15, 1970.

§15-51. Essentials of consent.

The consent of the parties to a contract must be:

1. Free.
2. Mutual; and,
3. Communicated by each to the other.

R.L.1910, § 896.

§15-52. Rescission where consent not free.

A consent which is not free, is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by Article 5 of this chapter.

R.L.1910, § 897.

§15-53. When consent not real.

An apparent consent is not real or free when obtained through:

1. Duress.
2. Menace.
3. Fraud.
4. Undue influence. or,
5. Mistake.

R.L.1910, § 898.

§15-54. Consent deemed obtained through invalidating causes, when.

Consent is deemed to have been obtained through one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

R.L.1910, § 899.

§15-55. Duress defined.

Duress consists in:

1. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly, harassing or oppressive.

R.L.1910, § 900.

§15-56. Menace defined - Threats.

Menace consists in a threat:

1. Of such duress as is specified in the first and third subdivisions of the last section.

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person.

R.L.1910, § 901.

§15-57. Kinds of fraud.

Fraud is either actual or constructive.

R.L.1910, § 902.

§15-58. Actual fraud defined.

Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

R.L.1910, § 903.

§15-59. Constructive fraud defined.

Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

R.L.1910, § 904.

§15-60. Actual fraud a question of fact.

Actual fraud is always a question of fact.

R.L.1910, § 905.

§15-61. Undue influence defined.

Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

R.L.1910, § 906.

§15-62. Kinds of mistake.

Mistake may be either of fact or of law.

R.L.1910, § 907.

§15-63. Mistake of fact defined.

Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

R.L.1910, § 908.

§15-64. Mistake of law defined.

Mistakes of law constitute a mistake within the meaning of this article only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

R.L.1910, § 909.

§15-65. Mistake of foreign law.

Mistake of foreign laws is a mistake of fact.

R.L.1910, § 910.

§15-66. Mutual consent defined.

Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases, defined by the article on interpretation, they are to be deemed so to agree without regard to the fact.

R.L.1910, § 911.

§15-67. Consent - How communicated.

Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

R.L.1910, § 912.

§15-68. Mode of acceptance.

If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

R.L.1910, § 913.

§15-69. When consent deemed communicated - Acceptance.

Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

R.L.1910, § 914.

§15-70. Certain acts as acceptance.

Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

R.L.1910, § 915.

§15-71. Acceptance must be absolute.
An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will include the person accepting. A qualified acceptance is a new proposal.
R.L.1910, § 916.

§15-72. Revocation of proposal.
A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.
R.L.1910, § 917.

§15-73. How proposal revoked.
A proposal is revoked:
1. By the communication of notice of revocation by the proposer to the other party, before his acceptance has been communicated to the former.
2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed the lapse of a reasonable time without communication of the acceptance.
3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,
4. By the death or insanity of the proposer.
R.L.1910, § 918.

§15-74. Subsequent consent ratifies.
A contract which is voidable, solely for want of due consent may be ratified by a subsequent consent.
R.L.1910, § 919.

§15-75. Acceptance of benefit includes obligations.
A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known, or ought to be known to the person accepting.
R.L. 1910, Sec. 920.

§15-101. Object of a contract.
The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.
R.L.1910, § 921.

§15-102. Requisites of the object.
The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time this contract is to be performed.
R.L.1910, § 922.

§15-103. Possibility defined.

Everything is deemed possible except that which is impossible in the nature of things.

R.L.1910, § 923.

§15-104. Unlawful object - Performance impossible - Object vaguely expressed.

Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

R.L.1910, § 924.

§15-105. Lawful part valid.

Where a contract has several distinct objects, of which one at least is lawful and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest.

R.L.1910, § 925.

§15-106. Good consideration defined.

Any benefit conferred, or agreed to be conferred upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

R.L.1910, § 926.

§15-107. Moral or legal obligation on promisor good as consideration.

An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

R.L.1910, § 927.

§15-108. Consideration must be lawful.

The consideration of a contract must be lawful.

R.L.1910, § 928.

§15-109. Effect of illegality of consideration.

If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

R.L.1910, § 929.

§15-110. Executed or executory consideration.
A consideration may be executed or executory, in whole or in part.
R.L.1910, § 930.

§15-111. Executory - How determined.
When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specific standard.
R.L.1910, § 931.

§15-112. Amount of consideration where not specified.
When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be as much money as the object of the contract is reasonably worth.
R.L.1910, § 932.

§15-113. Contract void when consideration cannot be ascertained as agreed.
Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void: Provided, that where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void.
R.L.1910, § 933.

§15-115. Burden of proof as to consideration.
The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.
R.L.1910, § 935.

§15-131. Contract express or implied.
A contract is either express or implied.
R.L.1910, § 936.

§15-132. Express contract defined.
An express contract is one, the terms of which are stated in words.
R.L.1910, § 937.

§15-133. Implied contract defined.

An implied contract is one, the existence and terms of which are manifested by conduct.
R.L.1910, § 938.

§15-134. What contracts may be oral.
All contracts may be oral, except such as are specially required by statute to be in writing.
R.L.1910, § 939.

§15-135. Writing prevented by fraud - Enforcement against fraudulent party.
Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.
R.L.1910, § 940.

§15-136. Statute of frauds.
The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, by an agent of the party or by a broker of the party pursuant to Sections 858-351 through 858-363 of Title 59 of the Oklahoma Statutes:
1. An agreement that, by its terms, is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in the article on guaranty;
3. An agreement made upon consideration of marriage, other than a mutual promise to marry; or
4. An agreement for the leasing for a longer period than one (1) year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent or a broker of the party sought to be charged, is invalid, unless the authority of the agent or the broker be in writing, subscribed by the party sought to be charged.
R.L. 1910, § 941. Amended by Laws 2003, c. 31, § 1, eff. Nov. 1, 2003; Laws 2013, c. 240, § 1, eff. Nov. 1, 2013.

§15-137. Writing excludes oral negotiations or stipulations.
The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.
R.L.1910, § 942.

§15-138. Delivery, contract takes effect on.

A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Added by Laws 1989, c. 148, § 1, emerg. eff. May 8, 1989.

§15-139. Seal - Necessity for seal abolished.

All distinctions between sealed and unsealed instruments are abolished.

R.L.1910, § 944.

§15-140. Credit agreements - Actions to enforce or seek damages - limits to actions on oral agreements.

A. As used in this section:

1. "Credit agreement" means an agreement by a financial institution to lend money, extend credit or otherwise make any other financial accommodation, or to renew, extend, modify, rearrange or forebear the repayment of any such loan, extension of credit or financial accommodation, but does not include any promissory note, real estate mortgage, or security agreement.

2. "Financial institution" means any bank, savings and loan association, or credit union, or any holding company or subsidiary thereof.

3. "Lender" means a financial institution that makes a credit agreement with a borrower.

4. "Borrower" means a person who seeks a credit agreement with a lender or financial institution as defined herein or to whom money is loaned, credit is extended, or any other financial accommodation is made or for whom any such loan, extension of credit or financial accommodation is renewed, extended, modified, rearranged or forborne by a lender or financial institution as defined herein.

B. No lender or borrower may maintain an action to enforce or seek damages for the breach of any term or condition of credit agreement having a principal amount greater than Fifteen Thousand Dollars ($15,000.00), unless such term or condition has been agreed to in writing and signed by the party against whom it is sought to be enforced or against whom damages are sought.

C. The provisions of this section shall not be construed to preclude a lender from maintaining an action against a borrower, whether or not a credit agreement has been signed by the borrower, with respect to any of the following:

1. Credit extended on an "account", as such term is defined in Section 4-104 of Title 12A of the Oklahoma Statutes; or

2. Credit extended pursuant to a "lender credit card or similar arrangement" or a "revolving loan account", as such terms are defined, respectively, in Sections 1-301 and 3-108 of Title 14A of the Oklahoma Statutes, if the terms or conditions relevant thereto

are in writing and are provided to the borrower prior to his usage of the card or account or otherwise in accordance with applicable law.

D. The provisions of this section shall be effective with respect to credit agreements entered into after the effective date of this act.

Added by Laws 1989, c. 148, § 1, emerg. eff. May 8, 1989.

§15-140.1. Debt cancellation agreement.

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.

Added by Laws 2008, c. 29, § 1, eff. Nov. 1, 2008. Amended by Laws 2008, c. 353, § 14, eff. Nov. 1, 2008; Laws 2012, c. 150, § 33, eff. Nov. 1, 2012.

§15-141.1. Short title.

This act shall be known and may be cited as the "Service Warranty Act".

Added by Laws 2012, c. 150, § 1, eff. Nov. 1, 2012. Amended by Laws 2014, c. 418, § 1, eff. Nov. 1, 2014.

§15-141.2. Definitions.

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. (1) for an association relying on subsection A of Section 141.6 of this title, if the association's total liabilities exceed the association's total assets as calculated in accordance with statutory accounting principles, or

(2) for an association relying on subsection B of Section 141.6 of this title, if the association's total liabilities exceed the association's total assets as calculated in accordance with generally accepted accounting principles,

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

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

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

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

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

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

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

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

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

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

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

c. includes, within or as an accompaniment to a service warranty, a written agreement that provides that, if the ancillary protection product fails to prevent loss or damage to a motor vehicle from a specific cause, the provider will pay to or on behalf of the service warranty holder specified incidental costs as a result of the failure of the ancillary protection product to perform pursuant to the terms of the ancillary protection product warranty. The reimbursement of incidental cost(s) promised under an ancillary protection product warranty must be tied to the purchase of a physical product that is formulated or designed to make the specified loss or damage from a specific cause less likely to occur.

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

12. "Net assets" means the amount by which the total assets of an association exceed the total liabilities of the association;

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

14. "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;

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

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

17. "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. The term "service warranty" includes a contract or agreement to provide one or more motor vehicle ancillary service(s) as defined by this section. 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 this state 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,

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

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

18. "Service warranty association" or "association" means any person, other than an authorized insurer, contractually obligated to a service warranty 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;

19. "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

20. "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.

Added by Laws 2012, c. 150, § 2, eff. Nov. 1, 2012. Amended by Laws 2014, c. 418, § 2, eff. Nov. 1, 2014; Laws 2017, c. 10, § 1, eff. Nov. 1, 2017; Laws 2018, c. 234, § 1, eff. Nov. 1, 2018.

§15-141.3. Enforcement of act.

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.

Added by Laws 2012, c. 150, § 3, eff. Nov. 1, 2012.

§15-141.4. Licensure – Exemptions.

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 warranties 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.

Added by Laws 2012, c. 150, § 4, eff. Nov. 1, 2012. Amended by Laws 2017, c. 10, § 2, eff. Nov. 1, 2017.

§15-141.5. Requirements for licensure.

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.

Added by Laws 2012, c. 150, § 5, eff. Nov. 1, 2012.

§15-141.6. Unearned reserve account - Exceptions - Net asset ratios.

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 warranties 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.

Added by Laws 2012, c. 150, § 6, eff. Nov. 1, 2012. Amended by Laws 2017, c. 10, § 3, eff. Nov. 1, 2017.

§15-141.7. Application for license - Investigation of applicant - Audited financial statements.

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 141.5 of this title, 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, which must be:

a. audited if the applicant complies with the requirements of subsection A of Section 141.6 of this title, or

b. verified under oath of at least two of its principal officers if the applicant utilizes an insurance policy which satisfies the requirements of subsection B of Section 141.6 of this title; and

3. A license fee as required pursuant to Section 141.4 of this title.

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 17 of Section 141.2 of this title 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. Financial statements are not required to be filed by an entity claiming one of the exclusions set forth in subparagraphs a and b of paragraph 17 of Section 141.2 of this title.

2. Any entity that begins claiming an exclusion exemption as provided by paragraph 17 of Section 141.2 of this title shall make the filing required by subsection A of this section prior to conducting or continuing business in this state.

3. Any entity approved for an exclusion exemption as provided by paragraph 17 of Section 141.2 of this title may be required by the Commissioner to provide subsequent information ascertained by the Commissioner to be necessary to determine continued qualification for an exclusion exemption as provided by paragraph 17 of Section 141.2 of this title. Financial statements shall not be required to be filed by an entity claiming one of the exclusions set forth in subparagraphs a and b of paragraph 17 of Section 141.2 of this title.

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. Financial statements shall not be required to be filed by an entity claiming one of the exclusions set forth in subparagraphs a and b of paragraph 17 of Section 141.2 of this title.
Added by Laws 2012, c. 150, § 7, eff. Nov. 1, 2012. Amended by Laws 2017, c. 10, § 4, eff. Nov. 1, 2017; Laws 2018, c. 234, § 2, eff. Nov. 1, 2018.

§15-141.8. Expiration and renewal of license.
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.
Added by Laws 2012, c. 150, § 8, eff. Nov. 1, 2012.

§15-141.9. Revocation or suspension of license.
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, or if the association is determined to be insolvent or impaired.
B. The license of any service warranty association shall be suspended or revoked if it is determined that such association:
1. 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.

Added by Laws 2012, c. 150, § 9, eff. Nov. 1, 2012. Amended by Laws 2018, c. 234, § 3, eff. Nov. 1, 2018.

§15-141.10. Revocation or suspension of license by order of Insurance Commissioner - Publication of revocation or suspension.

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.

Added by Laws 2012, c. 150, § 10, eff. Nov. 1, 2012.

§15-141.11. Duration of suspension.

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 any financial statements 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. Added by Laws 2012, c. 150, § 11, eff. Nov. 1, 2012. Amended by Laws 2018, c. 234, § 4, eff. Nov. 1, 2018.

§15-141.12. Fine in lieu of suspension or revocation.

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. Added by Laws 2012, c. 150, § 12, eff. Nov. 1, 2012.

§15-141.13. See the following versions:

OS 15-141.13v1 (HB 2715, Laws 2016, c. 72, § 1).

OS 15-141.13v2 (SB 102, Laws 2017, c. 241, § 1).

§15-141.13v1. Service warranty forms.

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, address and license number of the service warranty association and shall identify any administrator if different from the service warranty association, 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. For service contracts issued on and after July 1, 2017, the identity of the service warranty association and its license number shall either be preprinted on the service contract or added by printer at the time of sale so consumers can clearly identify the obligor of the service contract. Information to be printed at the time of sale shall be indicated as such at the time the service contract is filed for approval and a "Jane Doe" specimen shall accompany the service contract illustrating how the service contract will look after printing.

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.

F. The Insurance Commissioner may, by order, exempt from the requirements of this section for so long as he or she deems proper any document or form or type thereof as specified in such order, to which, in his or her discretion, this section may not practicably be applied, or the filing and approval of which are, in his or her opinion, not desirable or necessary for the protection of the public. Added by Laws 2012, c. 150, § 13, eff. Nov. 1, 2012. Amended by Laws 2016, c. 72, § 1, eff. Nov. 1, 2016.

§15-141.13v2. Service warranty forms.

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

B. Each 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.

C. Service warranties shall state the name and address of the service warranty association and shall identify any administrator if different from the service warranty association, the service warranty seller and the service warranty holder to the extent that the name of the service warranty holder has been furnished by the service warranty holder. For service warranties issued on and after July 1,

2017, the identity of the service warranty association and its license number shall be preprinted on the service warranty or added at the time of sale so consumers can clearly identify the obligor of the service warranty. Information to be printed at the time of sale shall be indicated as such at the time the service warranty is filed and a "Jane Doe" specimen shall accompany the service warranty illustrating how the service warranty will look after printing.

D. The Commissioner shall have the authority to immediately order a service warranty association to stop using any service warranty contract if the Commissioner determines that 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.

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

Added by Laws 2012, c. 150, § 13, eff. Nov. 1, 2012. Amended by Laws 2016, c. 64, § 1; Laws 2017, c. 10, § 5, eff. Nov. 1, 2017; Laws 2017, c. 241, § 1, eff. Nov. 1, 2017.

§15-141.14. Annual financial statement filing - Fines.

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 financial statement 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. The financial statements required by this subsection must be:

1. Audited and prepared in accordance with statutory accounting principles if the applicant complies with the requirements of subsection A of Section 141.6 of this title; or

2. Verified under oath of at least two of its principal officers and prepared in accordance with generally accepted accounting principles if the applicant utilizes an insurance policy which satisfies the requirements of subsection B of Section 141.6 of this title.

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 its financial statement in the form and within the time provided by the Service Warranty Act.

C. In addition to the annual financial statements required to be filed by subsection A of this section, 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 warranties 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 141.6 of this title 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.

Added by Laws 2012, c. 150, § 14, eff. Nov. 1, 2012. Amended by Laws 2017, c. 10, § 6, eff. Nov. 1, 2017; Laws 2018, c. 234, § 5, eff. Nov. 1, 2018.

§15-141.15. Examinations of service warranty associations.

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 financial 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.

Added by Laws 2012, c. 150, § 15, eff. Nov. 1, 2012. Amended by Laws 2018, c. 234, § 6, eff. Nov. 1, 2018.

§15-141.16. Permanent office records.

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.

Added by Laws 2012, c. 150, § 16, eff. Nov. 1, 2012.

§15-141.17. Service of process.

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

Added by Laws 2012, c. 150, § 17, eff. Nov. 1, 2012.

§15-141.18. Registry of name and business address of sales representatives.

Each service warranty association or insurer shall maintain a registry of the name and business address of each sales representative utilized by it in this state. Upon request by the Insurance Commissioner and with ten (10) days' notice to the service warranty association or insurer, the registry shall be provided to the Insurance Commissioner.

Added by Laws 2012, c. 150, § 18, eff. Nov. 1, 2012. Amended by Laws 2014, c. 418, § 3, eff. Nov. 1, 2014; Laws 2017, c. 10, § 7, eff. Nov. 1, 2017.

§15-141.19. Administrative penalties.

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.

Added by Laws 2012, c. 150, § 19, eff. Nov. 1, 2012.

§15-141.20. Prohibited conduct.

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.

Added by Laws 2012, c. 150, § 20, eff. Nov. 1, 2012.

§15-141.21. Service warranty disclosure statement.

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".

Added by Laws 2012, c. 150, § 21, eff. Nov. 1, 2012.

§15-141.22. Dissolution or liquidation of association.

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.
Added by Laws 2012, c. 150, § 22, eff. Nov. 1, 2012.

§15-141.23. Fraudulent applications - Violations of act - Criminal penalties.

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.
Added by Laws 2012, c. 150, § 23, eff. Nov. 1, 2012.

§15-141.24. Civil actions.

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 17 of Section 141.2 of this title 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.
Added by Laws 2012, c. 150, § 24, eff. Nov. 1, 2012. Amended by Laws 2014, c. 418, § 4, eff. Nov. 1, 2014.

§15-141.25. Prohibited conduct.

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.
Added by Laws 2012, c. 150, § 25, eff. Nov. 1, 2012.

§15-141.26. Unfair methods of competition and unfair or deceptive acts.

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,
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, or
e. is false, deceptive or misleading with respect to:
(1) the service warranty association's affiliation with a motor vehicle manufacturer,
(2) the service warranty association's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty,
(3) the expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty, or
(4) a requirement that a motor vehicle owner register for a new service warranty with such provider in order to maintain coverage under the motor vehicle owner's current service warranty or manufacturer's original equipment warranty;

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, or
   e. causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement, or 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;

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; and

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

Added by Laws 2012, c. 150, § 26, eff. Nov. 1, 2012. Amended by Laws 2016, c. 64, § 2, eff. Nov. 1, 2016; Laws 2017, c. 10, § 8, eff. Nov. 1, 2017; Laws 2018, c. 304, § 4, emerg. eff. May 10, 2018.

NOTE: Laws 2017, c. 42, § 5 purported to repeal Laws 2016, c. 64, § 2, but without reference to Laws 2017, c. 10, § 8, which amended it. Laws 2017, c. 253, § 1 repealed by Laws 2018, c. 304, § 5, emerg. eff. May 10, 2018.

§15-141.27. Scope of investigation.

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.

Added by Laws 2012, c. 150, § 27, eff. Nov. 1, 2012.

§15-141.28. Hearings.

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.
Added by Laws 2012, c. 150, § 28, eff. Nov. 1, 2012.

§15-141.29. Final order - Cease and desist order.

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.
Added by Laws 2012, c. 150, § 29, eff. Nov. 1, 2012.

§15-141.30. Violations of act - Injunctive relief.

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.
Added by Laws 2012, c. 150, § 30, eff. Nov. 1, 2012.

§15-141.31. Act relation to civil and common law.

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.
Added by Laws 2012, c. 150, § 31, eff. Nov. 1, 2012.

§15-141.32. Privileged and confidential records.

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.
Added by Laws 2012, c. 150, § 32, eff. Nov. 1, 2012.

§15-141.33. Examination of claim files.

A. Claim files of service warranty associations licensed pursuant to the Service Warranty Act shall be subject to examination by the Insurance Commissioner or by duly appointed designees. The claim files shall contain all notes and work papers pertaining to a claim in such detail that pertinent events and the dates of the events can be reconstructed. In addition, the Commissioner and authorized employees and examiners shall have access to any files of a service warranty association that may relate to a particular complaint under investigation or to an inquiry or examination by the Insurance Department.

B. Every service warranty association, upon receipt of any inquiry from the Commissioner, shall, within thirty (30) days from the date of the inquiry, furnish the Commissioner with an adequate response to the inquiry.

C. Every service warranty association, upon receipt of any pertinent written communication including, but not limited to, electronic mail or other forms of written electronic communication or documentation by the service warranty association of a verbal

communication from a claimant which reasonably suggests that a response is expected, shall, within thirty (30) days after receipt thereof, furnish the claimant with an adequate response to the communication.

D. Any violation by a service warranty association of this section shall subject the service warranty association to discipline including a civil penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00).

Added by Laws 2016, c. 72, § 3, eff. Nov. 1, 2016.

NOTE: An identical section, also named §15-141.33, was added by Laws 2016, c. 64, § 3. That section was repealed by Laws 2017, c. 42, § 6.

§15-141.34. See the following versions:

OS 15-141.34v1 (SB 823, Laws 2016, c. 64, § 4).

OS 15-141.34v2 (HB 2715, Laws 2016, c. 72, § 4).

§15-141.35. See the following versions:

OS 15-141.35v1 (SB 823, Laws 2016, c. 64, § 5).

OS 15-141.35v2 (HB 2715, Laws 2016, c. 72, § 5).

§15-151. All contracts, public and private, interpreted by same rules.

All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by law.

R.L.1910, § 945.

§15-152. Intent controls.

A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

R.L.1910, § 946.

§15-153. Intention ascertained, how.

For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

R.L.1910, § 947.

§15-154. Language governs.

The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

R.L.1910, § 948.

§15-155. Intention ascertained from writing.

When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article.
R.L.1910, § 949.

§15-156. Real intention not expressed - Error to be disregarded.
When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.
R.L.1910, § 950.

§15-157. Effect given to every part.
The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.
R.L.1910, § 951.

§15-158. Several contracts taken as one.
Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.
R.L.1910, § 952.

§15-159. Interpretation favors validity.
A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties.
R.L.1910, § 953.

§15-160. Words to be taken in ordinary sense - Exceptions.
The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.
R.L.1910, § 954.

§15-161. Technical words.
Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.
R.L.1910, § 955.

§15-162. What law governs.
A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a

place of performance, according to the law and usage of the place where it is made.
R.L.1910, § 956. d

§15-163. Circumstances explain.
A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.
R.L.1910, § 957.

§15-164. Terms restricted to intention of parties.
However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.
R.L.1910, § 958.

§15-165. Promisor's belief as to promisee's understanding governs in case of ambiguity.
If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.
R.L.1910, § 959.

§15-166. Part subordinate to whole.
Particular clauses of a contract are subordinate to its general intent.
R.L.1910, § 960.

§15-167. Written and original parts control.
Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.
R.L.1910, § 961.

§15-168. Repugnancy - How reconciled.
Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract.
R.L.1910, § 962.

§15-169. Inconsistent words rejected.

Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.
R.L.1910, § 963.

§15-171. Reasonable stipulations implied.
Stipulations which are necessary to make a contract reasonable or conformable to usage, are implied in respect to matters concerning which the contract manifests no contrary intention.
R.L.1910, § 965.

§15-172. Necessary incidents implied, when.
All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.
R.L. 1910, § 966.

§15-173. Reasonable time allowed where not specified - Immediate performance.
If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.
R.L.1910, § 967.

§15-174. Time not of essence unless so provided.
Time is never considered as of the essence of a contract, unless by its terms expressly so provided.
R.L.1910, § 968.

§15-175. Promise presumed joint and several, when.
Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.
R.L.1910, § 969.

§15-176. Promise of several in singular form.
A promise made in the singular number, but executed by several persons, is presumed to be joint and several.
R.L.1910, § 970.

§15-177. Executed and executory contracts defined.
An executed contract is one, the object of which is fully performed. All others are executory.
R.L.1910, § 971.

§15-178. Contracts of designating former spouse as beneficiary or providing death benefits - Effect of divorce or annulment.

A. If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit (including life insurance contracts, annuities, retirement arrangements, compensation agreements, depository agreements, security registrations, and other contracts designating a beneficiary of any right, property, or money in the form of a death benefit), the party to the contract with the power to designate the beneficiary or to make provision for payment of any death benefit dies after being divorced from the person designated as the beneficiary or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the decedent's former spouse shall be treated for all purposes under the contract as having predeceased the decedent.

B. Subsection A of this section shall not apply:

1. If the decree of divorce or annulment is vacated;

2. If the decedent had remarried the former spouse and was married to said spouse at the time of the decedent's death;

3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;

4. If the decedent makes the contract subsequent to the divorce or annulment;

5. To the extent, if any, the contract contains a provision expressing an intention contrary to subsection A of this section; or

6. If the decedent renames the former spouse as the beneficiary or as the person or persons to whom payment of a death benefit is to be made in a writing delivered to the payor of the benefit prior to the death of the decedent and subsequent to the divorce or annulment.

C. For purposes of subsection A of this section, "death benefit" shall not include:

1. Any interest in property in which the decedent's former spouse has an interest as a joint tenant; or

2. Any interest in property in which the decedent's former spouse has a beneficial interest in an express trust created by the decedent during the decedent's lifetime for which provision is made in Section 175 of Title 60 of the Oklahoma Statutes.

D. This section shall apply to any contract of a decedent made and entered into on or after November 1, 1987 and to depository agreements and security registrations made and entered into on or after September 1, 1994.

Added by Laws 1987, c. 201, § 2, eff. Nov. 1, 1987. Amended by Laws 1989, c.181, § 10, eff. Nov. 1, 1989; Laws 1994, c. 313, § 4, eff. Sept. 1, 1994.

§15-211. What contracts are unlawful.

Those contracts are unlawful which are:

1. Contrary to an express provision of law.

2. Contrary to the policy of express law, though not expressly prohibited; or,

3. Otherwise contrary to good morals.

R.L.1910, § 972.

§15-212. Certain contracts against policy of law.

All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another or violation of law, whether willful or negligent, are against the policy of the law.

R.L.1910, § 973.

§15-212.1. Notice exempting business entity from liability for personal injury void.

Any notice given by a business entity which provides services or facilities for profit to the general public and which seeks to exempt the business entity from liability for personal injury caused by or resulting from any acts of negligence on its part or on the part of its servants or employees, shall be deemed void as against public policy and wholly unenforceable.

Added by Laws 1985, c. 153, § 1, eff. Jan. 1, 1986.

§15-213. Penalties void.

Except as expressly provided in Section 215 of this title, penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

Amended by Laws 1985, c. 107, § 1, emerg. eff. May 28, 1985.

§15-214. Attempt to fix damages void except as provided.

Every contract, by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by Section 215 of this title.

Amended by Laws 1985, c. 107, § 2, emerg. eff. May 28, 1985.

§15-215. Amount presumed to be damages, provision for.

A. A stipulation or condition in a contract except a contract to purchase and sell real property, providing for the payment of an amount which shall be presumed to be the amount of damage sustained by a breach of such contract, shall be held valid, when, from the

nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

B. A provision in a real estate sales contract, providing for the payment of anamount which shall be presumed to be the amount of damages sustained by a breach of such contract, shall be held valid and not a penalty, when such amount does not exceed five percent (5%) of the purchase price. In the event such amount exceeds five percent (5%) of the purchase price, such provision shall be held invalid and a penalty unless the party seeking to uphold the provision establishes that such amount is reasonable. If such provision is valid under this subsection, the limitations of Section 28 of Title 23 of the Oklahoma Statutes do not apply.
Amended by Laws 1985, c. 107, § 3, emerg. eff. May 28, 1985.

§15-216. Resort to courts, provisions restricting - Limiting time therefor.

Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.
R.L.1910, § 977.

§15-217. Restraint of trade.

Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by Sections 218 and 219 of this title, or otherwise than as provided by Section 2 of this act, is to that extent void.
R.L.1910, § 978. Amended by Laws 1989, c. 359, § 1, emerg. eff. June 3, 1989; Laws 2001, c. 406, § 3, emerg. eff. June 4, 2001.

§15-218. Restraint of trade - Exception as to sale of goodwill.

One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified county and any county or counties contiguous thereto, or a specified city or town or any part thereof, so long as the buyer, or any person deriving title to the goodwill from him carries on a like business therein. Provided, that any such agreement which is otherwise lawful but which exceeds the territorial limitations specified by this section may be deemed valid, but only within the county comprising the primary place of the conduct of the subject business and within any counties contiguous thereto.
R.L.1910, § 979.

§15-219. Restraint of trade - Exception as to partners.

Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within a specified county and any county or counties contiguous

thereto, or a specified city or town or any part thereof. Provided, that any such agreement which is otherwise lawful but which exceeds the territorial limitations specified by this section may be deemed valid, but only within the county comprising the primary place of the conduct of the business of the subject partnership and within any counties contiguous thereto.
R.L.1910, § 980.

§15-219A. Noncompetition agreements.

A. A person who makes an agreement with an employer, whether in writing or verbally, not to compete with the employer after the employment relationship has been terminated, shall be permitted to engage in the same business as that conducted by the former employer or in a similar business as that conducted by the former employer as long as the former employee does not directly solicit the sale of goods, services or a combination of goods and services from the established customers of the former employer.

B. Any provision in a contract between an employer and an employee in conflict with the provisions of this section shall be void and unenforceable.
Added by Laws 2001, c. 406, § 4, emerg. eff. June 4, 2001.

§15-219B. Solicitation of employees.

A contract or contractual provision which prohibits an employee or independent contractor of a person or business from soliciting, directly or indirectly, actively or inactively, the employees or independent contractors of that person or business to become employees or independent contractors of another person or business shall not be construed as a restraint from exercising a lawful profession, trade or business of any kind. Sections 217, 218, 219 and 219A of Title 15 of the Oklahoma Statutes shall not apply to such contracts or contractual provisions.
Added by Laws 2013, c. 194, § 1, eff. Nov. 1, 2013.

§15-220. Restraint of marriage.

Every contract in restraint of the marriage of any person, other than a minor, is void.
R.L.1910, § 981.

§15-221. "Construction agreement" defined - Limitations on liability arising out of death or bodily injury void - Exceptions.

A. For purposes of this section, “construction agreement” means a contract, subcontract, or agreement for construction, alteration, renovation, repair, or maintenance of any building, building site, structure, highway, street, highway bridge, viaduct, water or sewer system, or other works dealing with construction, or for any moving,

demolition, excavation, materials, or labor connected with such construction.

B. Except as provided in subsection C or D of this section, any provision in a construction agreement that requires an entity or that entity's surety or insurer to indemnify, insure, defend or hold harmless another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, which arises out of the negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers, is void and unenforceable as against public policy.

C. The provisions of this section do not affect any provision in a construction agreement that requires an entity or that entity's surety or insurer to indemnify another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, but such indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors, or suppliers.

D. This section shall not apply to construction bonds nor to contract clauses which require an entity to purchase a project-specific insurance policy, including owners' and contractors' protective liability insurance, project management protective liability insurance, or builder's risk insurance.

E. Any provision, covenant, clause or understanding in a construction agreement that conflicts with the provisions and intent of this section or attempts to circumvent this section by making the agreement subject to the laws of another state, or that requires any litigation, arbitration or other dispute resolution proceeding arising from the agreement to be conducted in another state, is void and unenforceable.

Added by Laws 2006, c. 323, § 1, eff. Nov. 1, 2006.

§15-222. Rental of goods or rental-related services - Automatic renewal provisions.

No contract for the rental of goods or rental-related services where all or substantially all of the contract terms are drafted by the provider of such goods or services shall contain any automatic renewal provision that extends the initial term of the contract for any period longer than six (6) months, unless the contract provides the nondrafting party with the ability to terminate at any time during the renewal period without penalty by providing notice of not more than sixty (60) days. Nothing in this section shall be construed to prohibit the parties to the contract from entering into a new contract at the end of the initial term of the contract or at any time after an extension of the contract as provided by this section.

Added by Laws 2017, c. 241, § 2, eff. Nov. 1, 2017.

§15-231. Contract may be extinguished.

A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this article.
R.L.1910, § 982.

§15-232. Rescission extinguishes.

A contract is extinguished by its rescission.
R.L.1910, § 983.

§15-233. Rescission - Cases when party may rescind.

A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

2. If through the fault of the party as to whom he rescinds, the consideration for his obligation fails in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause;

5. By consent of all of the other parties; or

6. If the party against whom rescission is sought violates the Oklahoma Consumer Protection Act, Section 751 et seq. of this title.
R.L. 1910, § 984. Amended by Laws 1999, c. 175, § 1, eff. Nov. 1, 1999.

§15-233A. Procedures in actions for rescission.

Where the action, counter claim, cross claim or plea in intervention is timely brought for relief based on the theory of rescission, whether formerly the action would have been denominated rescission at law or rescission in equity, the service of a pleading on the adverse party shall be deemed sufficient notice of rescission and of an offer to restore the benefits received under the contract. The method of trial to be afforded shall depend on the relief to which the party who brought suit on the theory of rescission is entitled.
Laws 1971, c. 46, § 1, eff. Oct. 1, 1971.

§15-233B. Form of relief in actions for rescission.

In an action, counter claim, cross claim or plea in intervention based on the theory of rescission of a contract, the court shall adjust the equities between the parties, and although the action is tried to a jury, the court may require the party to whom relief based on rescission is granted to make that compensation to the other party

which may be required. If the court determines that the contract may not be rescinded, it may grant damages or any other relief to which the party may be entitled, whether or not such relief is sought in the pleadings.
Laws 1971, c. 46, § 2, eff. Oct. 1, 1971.

§15-234. Stipulation as to errors of description as affecting rescission.

A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.
R.L.1910, § 985.

§15-235. Duty of party attempting rescission.

Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,
2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses to do so.
R.L.1910, § 986.

§15-236. Oral contract may be altered by writing - Extinguishment in part.

A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.
R.L.1910, § 987.

§15-237. Written contract altered, how.

A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.
R.L.1910, § 988.

§15-238. Extinguishment by destruction or cancellation.

The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.
R.L.1910, § 989.

§15-239. Destruction, cancellation or alteration by party entitled to benefit.

The intentional destruction, cancellation, or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

R.L.1910, § 990.

§15-240. Duplicate, effect of altering or destroying.

Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

R.L.1910, § 991.

§15-241. Restoration of thing unlawfully taken.

One who obtains a thing without the consent of its owner, or by consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

R.L.1910, § 996.

§15-242. Demand for thing unlawfully obtained unnecessary - Exceptions.

The restoration required by the last section must be made without demand; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

R.L.1910, § 997.

§15-244. Short title.

This act shall be known and may be cited as the "Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act".

Added by Laws 2011, c. 156, § 1, eff. Nov. 1, 2011.

§15-244A. Legislative findings.

The Legislature finds and declares that the retail distribution, sales and rental of agricultural, construction, utility, industrial, mining, outdoor power, forestry and lawn and garden equipment utilizing independent dealers operating under contract with the supplier, vitally affects the general economy of this state, the public interest and the public welfare. Therefore, the Legislature has determined that it is necessary to regulate the business relations between the independent dealers and the equipment suppliers

as contemplated in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act and that any action taken in violation of this act will result in a violation of an important public policy of this state.
Added by Laws 2011, c. 156, § 2, eff. Nov. 1, 2011.

§15-245. Definitions.

For the purposes of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act:

1. "Current net parts price" means, with respect to current parts, the price for repair parts listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued, or for purposes of Section 9 of this act, the price list or catalogue in effect at the time the repair parts were ordered. Current net parts price means, with respect to superseded repair parts, the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is terminated or discontinued for the part that performs the same function and purpose as the superseded part, but is simply listed under a different part number;

2. "Current net parts cost" means the current net parts price less any trade or cash discounts typically given to the dealer with respect to such dealer's normal, ordinary course orders of repair parts;

3. "Dealer" means any person primarily engaged in the business of:

a. selling or leasing equipment or repair parts to the ultimate consumer, and

b. repairing or servicing equipment;

4. "Dealer agreement" means either an oral or written agreement or arrangement for a definite or indefinite period between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts. Notwithstanding the foregoing, if a dealer has more than one business location covered by the same dealer agreement, the requirements of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act will be applied to the repurchase of a dealer's inventory at a particular location upon the closing of such location, unless the closing of the location occurs without the permission of the supplier;

5. "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement;

6. "Demonstrator" means equipment in a dealer's inventory that has never been sold at retail, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short-term rental agreement, with the intent of encouraging the person to

purchase the equipment and which has been authorized for the use by the supplier;

7. "Equipment" means:

a. all-terrain vehicles, utility task vehicles and recreational off-highway vehicles, in each case, regardless of how used, and

b. other machinery, equipment, implements or attachments therefor, used for or in connection with the following purposes:

(1) lawn, garden, golf course, landscaping or grounds maintenance,

(2) planting, cultivating, irrigating, harvesting, and producing of agricultural and/or forestry products,

(3) raising, feeding, tending to or harvesting products from livestock or any other activity in connection therewith, or

(4) industrial, construction, maintenance, mining or utility activities or applications.

Equipment shall not mean trailers or self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway;

8. "Family member" means a spouse, child, son-in-law, daughter-in-law or lineal descendant;

9. "Good cause" has the meaning as set forth in Section 5 or 6 of this act, as applicable;

10. "Index" means the United States Bureau of Labor Statistics Producer Price Index (industry data) for construction machinery, series identification number pcu333120333120 or any successor Index measuring substantially similar information;

11. "Inventory" means equipment, repair parts, data processing hardware or software, and specialized service or repair tools;

12. "Net equipment cost" means the price the dealer actually paid to the supplier for equipment, plus:

a. freight, at the cost stated on the invoice, if available, and if not the truckload rates in effect as of the effective date of the termination of a dealer agreement, if freight was paid by the dealer from the supplier's location to the dealer's location, and

b. reimbursement for labor incurred in preparing the equipment for retail sale or rental, also known as set-up costs, which labor will be reimbursed at the dealer's standard labor rate charged by the dealer to its customers for nonwarranty repair work; provided, however, if a supplier has established a reasonable set-up time, such labor will be reimbursed at an amount equal to the reasonable set-up time in effect as of the

date of delivery multiplied by the dealer's standard labor rate;

13. "New equipment" means, for purposes of determining whether a dealer is a single-line dealer, any equipment that could be returned to the supplier upon a termination of a dealer agreement pursuant to Sections 246 and 247 of this title;

14. "Person" means a natural person, corporation, partnership, limited liability company, company, trust or any and all other forms of business enterprise, including any other entity in which it has a majority interest or of which it has control, as well as the individual officers, directors and other persons in active control of the activities of each entity;

15. "Repair parts" means all parts related to the repair of equipment, including superseded parts;

16. "Single-line dealer" means a dealer that has:

a. purchased construction, industrial, forestry and mining equipment from a single-line supplier constituting seventy-five percent (75%) of the dealer's new equipment that is construction, industrial, forestry and mining equipment, calculated on the basis of net equipment cost, and

b. a total annual average sales volume of equipment acquired from the single-line supplier in excess of Twenty-Five Million Dollars ($25,000,000.00) for the five (5) calendar years immediately preceding the applicable determination date; provided, however, the Twenty-Five-Million-Dollar threshold will be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year;

17. "Single-line dealer agreement" means a dealer agreement between a single-line dealer and a single-line supplier that only provides for the rights and obligations of the parties with respect to the purchase and sales of equipment that is construction, forestry, industrial and mining equipment;

18. "Single-line supplier" means the supplier that is selling the single-line dealer construction, industrial, forestry and mining equipment constituting seventy-five percent (75%) of the dealer's new equipment that is construction, industrial, forestry and mining equipment;

19. "Specialty agricultural equipment" means equipment that is designed for and used in:

a. planting, cultivating, irrigating, harvesting and producing of the agricultural products, or

b. raising, feeding, tending to or harvesting products from livestock;

20. "Specialty agricultural equipment supplier" means a supplier of specialty agricultural equipment whose gross sales revenue to the dealer is less than the threshold amount and whose product line does not include farm tractors or combines and whose sales of outdoor power equipment to the dealer does not exceed ten percent (10%) of its total sales to the dealer during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement. Whether a supplier qualifies as a specialty agricultural equipment supplier is determined on a case by case basis depending on the sales of the applicable dealer and to the applicable dealer by such specialty agricultural equipment supplier;

21. "Supplier" means any person engaged in the business of manufacturing, assembly or wholesale distribution of equipment or repair parts. The term shall also include any successor in interest, including any receiver, trustee, liquidator, assignee, purchaser of assets or stock, or a surviving corporation resulting from a merger, liquidation or reorganization of the original supplier. Purchasers of all, or substantially all, of the inventory of a supplier or a supplier's division or product line will constitute a purchaser of all or substantially all of the supplier's assets;

22. "Terminate" or "termination" means to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer agreement. For purposes of Section 9 of this act and Sections 246 and 247 of this title, the terms shall not include the phrase "substantially change the competitive circumstances of"; and

23. "Threshold amount" means that the lesser of:

a. ten percent (10%) of the dealer's gross sales revenue, or

b. Three Hundred Fifty Thousand Dollars ($350,000.00), in each case based on net sales of the dealership during the one year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement; provided, however, the Three-Hundred-Fifty-Thousand-Dollar amount will be increased each year by an amount equal to the then current amount multiplied by the percentage increase in the Index from January of the immediately preceding year to January of the current year.

Added by Laws 1982, c. 274, § 1, operative Oct. 1, 1982. Amended by Laws 1991, c. 51, § 1, emerg. eff. April 9, 1991; Laws 1998, c. 82, § 1, eff. Nov. 1, 1998; Laws 2008, c. 120, § 1, eff. Nov. 1, 2008; Laws 2009, c. 200, § 1, eff. Nov. 1, 2009; Laws 2010, c. 130, § 1, eff. Nov. 1, 2010; Laws 2011, c. 156, § 3, eff. Nov. 1, 2011.

§15-245A. Prohibited acts.

It shall be a violation of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act for a supplier to take any one or more of the following actions:

1. To coerce, compel or require any dealer to accept delivery of any equipment or repair parts which the dealer has not voluntarily ordered, except as required by any applicable law or unless such equipment or repair parts are safety features required by a supplier;

2. To require any dealer to purchase goods or services as a condition to the sale by the supplier to the dealer of any equipment, repair parts or other goods or services, provided that nothing herein shall prohibit a supplier from requiring the dealer to purchase all repair parts, special tools and training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer;

3. To coerce any dealer into a refusal to purchase equipment manufactured by another supplier. However, it shall not be a violation of this section to require separate facilities, financial statements or sales staff for major competing lines so long as the dealer is given at least three (3) years notice of such requirement;

4. To refuse to deliver in reasonable quantities and within a reasonable time, after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by such supplier, equipment covered by such dealer agreement specifically advertised or represented by such supplier to be available for immediate delivery. The failure to deliver any such equipment will not be considered a violation of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act if such failure is due to prudent and reasonable restrictions on extensions of credit by the supplier to the dealer, an act of nature, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control or a business decision by the supplier to limit the production volume of the equipment;

5. To discriminate, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line;

6. To discriminate, directly or indirectly, in price between different dealers with respect to purchases of equipment or repair parts of like grade and quality and identical brand, where the effect of such discrimination may be to substantially lessen competition, tend to create a monopoly in any line of commerce, or injure, destroy or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination; provided, however, different prices may be charged if:

a. such differences are due to differences in the cost of manufacture, sale or delivery of the equipment or repair parts,

b. the supplier can show that its lower price was made in good faith to meet an equally low price of a competitor, or
c. such differences are related to the volume of equipment purchased by dealers or market share obtained by dealers;

7. To prevent by contract or otherwise, any dealer from changing its capital structure or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier, and provided the dealer at all times meets any reasonable capital standards required by the supplier pursuant to a right granted in the dealer agreement and imposed on similarly situated dealers; and

8. To require a dealer to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this act.

Added by Laws 1991, c. 51, § 2, emerg. eff. April 9, 1991. Amended by Laws 1998, c. 82, § 2, eff. Nov. 1, 1998; Laws 2011, c. 156, § 4, eff. Nov. 1, 2011.

§15-245A.1. Good cause.

A. The dealer must give the supplier at least thirty (30) days prior written notice of termination. No supplier may terminate a dealer agreement without good cause. Except as otherwise specifically provided in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, "good cause" means the failure by a dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

1. The dealer or dealership has transferred a controlling ownership interest in its business without the supplier’s consent;

2. The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, or there has been a closeout or sale of a substantial part of the dealer’s assets related to the business, or there has been a commencement of dissolution or liquidation of the dealer;

3. There has been a deletion, addition or change in dealer or dealership locations without the prior written approval of the supplier;

4. The dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer’s present or future obligations to the supplier; provided, however, good cause will not

exist if a person revokes any guarantee in connection with or following the transfer of such person's entire ownership interest in the dealer unless the supplier requires the person to execute a new guarantee of the dealer's present or future obligations in connection with the transfer of ownership interest;

5. The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

6. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and supplier;

7. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare or the representation or reputation of the supplier's product; or

8. The dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

B. The provisions of this section will not apply to single-line dealer agreements.

Added by Laws 2011, c. 156, § 5, eff. Nov. 1, 2011.

§15-245A.2. Contents of supplier notice of termination - Supplier failure to approve or deny request - Death of dealer.

A. Except as otherwise provided in this section, a supplier must provide a dealer at least one hundred eighty (180) days prior written notice of termination of a dealer agreement. The notice must state all reasons constituting good cause for such termination and must state that the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice will be void. A supplier, other than a specialty agricultural equipment supplier, may not terminate a dealer agreement for the reason set forth in paragraph 8 of subsection A of Section 5 of this act unless the supplier gives the dealer notice of such action at least two (2) years before the effective date of the action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice will be void and the dealer agreement will continue in full force and effect. The notice and right to cure provisions under this section shall not apply if the reason for termination is for any reason set forth in paragraphs 1 through 7 of subsection A of Section 5 of this act.

B. If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest therein, the supplier shall approve or deny such a request within sixty (60) days after receiving a written request from the dealer. If the supplier has neither approved nor denied the

request within the sixty-day period, the request will be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subsection, the supplier must provide the dealer with a written notice of the denial that states the reasons for the denial. A supplier may only deny a request based on the failure of the proposed transferees to meet the reasonable requirements consistently imposed by the supplier in determining approval of the transfer and/or approvals of new dealers.

C. If a dealer dies and the supplier has contractual authority to approve or deny a request for a sale or transfer of the dealer's business or equity ownership interest therein, the dealer's estate, or such other person with authority to transfer assets of the dealer, will have one hundred eighty (180) days to submit to the supplier a written request for a sale or transfer of the business or equity ownership interest. If the request is timely submitted, the supplier shall approve or deny the request in accordance with subsection B of this section. Notwithstanding anything to the contrary contained in the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, any attempt by the supplier to terminate the dealer or the dealership as a result of the death of a dealer will be delayed until there has been compliance with the terms of this section or the one-hundred-eighty-day period has expired, as applicable.

D. The provisions of this section shall not apply to single-line dealer agreements.

Added by Laws 2011, c. 156, § 6, eff. Nov. 1, 2011.

§15-245A.3. Good cause.

A. This section will only apply to single-line dealer agreements.

B. No supplier may terminate a dealer agreement without good cause. For purposes of this section and Section 8 of this act only, "good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement if such requirements are not different from those imposed on other similarly situated dealers. In addition, good cause exists whenever:

1. There has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business, or there has been a commencement of a dissolution or liquidation of the dealer;

2. The dealer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

3. The dealer has substantially defaulted under a chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation or discontinuance of a

guarantee of a present or future obligation of the dealer to the supplier;

4. The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

5. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier; or

6. The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership; provided, however, good cause does not exist if the supplier consents to an action described in this paragraph.

C. Except as otherwise provided in this subsection, a supplier shall provide a dealer with at least ninety (90) days written notice of termination. The notice must state all reasons constituting good cause for such termination and must state that the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is rectified within sixty (60) days, the notice will be void. Notwithstanding the foregoing, if the good cause for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this paragraph shall not apply if the reason for termination is for any reason set forth in paragraphs 1 through 6 of subsection B of this section.

Added by Laws 2011, c. 156, § 7, eff. Nov. 1, 2011.

§15-245A.4. Death of dealer.

A. This section shall only apply to single-line dealer agreements.

B. If a dealer dies, a supplier shall have ninety (90) days in which to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative or family member to operate a dealership without the specific written consent of the supplier.

C. Notwithstanding the foregoing, if a supplier and dealer have previously executed an agreement concerning succession rights prior to the dealer's death, and if such agreement is still in effect, the

agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor. Added by Laws 2011, c. 156, § 8, eff. Nov. 1, 2011.

§15-245A.5. Dealer warranty claims.

A. If a dealer submits a warranty claim to a supplier while the dealer agreement is in effect or within sixty (60) days after the termination of the dealer agreement, if the claim is for work performed before the termination or expiration of the dealer agreement, the supplier must accept or reject such warranty claim by written notice to the dealer within forty-five (45) days after the supplier's receipt thereof. If the supplier does not reject the warranty claim in the time period specified above, the claim will be deemed to be accepted. If the supplier accepts the warranty claim, the supplier must pay or credit to the dealer's account all amounts owed with respect to the claim to the dealer within thirty (30) days after it is accepted. If the supplier rejects a warranty claim, the supplier must give the dealer written or electronic notice of the grounds for rejection, which reasons must be consistent with the supplier's reasons for rejecting warranty claims of other dealers, both in their terms and manner of enforcement. If no grounds for rejection are given, the claim will be deemed to be accepted.

B. Any claim which is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty (30) days of receipt by the dealer of the supplier's notification of the disapproval.

C. Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof multiplied by the dealer's established customer hourly retail labor rate for non-warranty repair work, which shall have previously been made known to the supplier. Parts used in warranty repair work shall be reimbursed at the current net parts cost plus fifteen percent (15%).

D. For purposes of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act, any repair work or installation of replacement parts performed with respect to the dealer's equipment in inventory or equipment of the dealer's customers at the request of the supplier, including work performed pursuant to a product improvement program (PIP), will be deemed to create a warranty claim for which the dealer shall be paid pursuant to this section.

E. A supplier may audit warranty claims submitted by its dealers for a period of up to one (1) year following payment of the claims, and may charge back to its dealers any amounts paid based upon claims shown by audit to be misrepresented. If a warranty claim is

misrepresented, then warranty claims submitted within the three-year period ending with the date a claim is shown by audit to be misrepresented may be audited.

F. The requirements of subsections A, B and C of this section apply to all warranty claims submitted by a dealer to a supplier in which the dealer has complied with the supplier's reasonable policies and procedures for warranty reimbursement and such claims are warranted claims under the supplier's warranty policy. A supplier's warranty reimbursement policies and procedures will be deemed unreasonable to the extent they conflict with any of the provisions of this section.

G. A dealer may choose to accept alternate reimbursement terms and conditions in lieu of the requirements of subsections A, B and C of this section if there is a written dealer agreement between the supplier and the dealer that requires the supplier to compensate the dealer for warranty labor costs either as:

a. a discount in the pricing of the equipment to the dealer, or

b. a lump sum payment to the dealer that is made to the dealer within ninety (90) days of the sale of the supplier's new equipment. The discount or lump sum must be no less than five percent (5%) of the suggested retail price of the equipment.

If the requirements of this subsection are met and alternate terms and conditions are in place, subsections A, B and C of this section do not apply and the alternate terms and conditions are enforceable. Nothing contained in this subsection shall be deemed to affect the supplier's obligation to reimburse the dealer for parts in accordance with subsection C of this section.
Added by Laws 2011, c. 156, § 9, eff. Nov. 1, 2011.

§15-246. Payment of equipment after agreement termination.

A. Whenever any dealer enters into a dealer agreement with a supplier and either the supplier or the dealer desires to terminate, or otherwise discontinue the dealer agreement, the supplier shall pay to the dealer or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier, unless the dealer should desire to keep such equipment or repair parts:

1. A sum equal to one hundred percent (100%) of the net equipment cost of all new, unsold, undamaged equipment, less a downward adjustment for such equipment between twenty-four (24) months and thirty-six (36) months old that reflects a reasonable allowance for refurbishment and the price another dealer will pay for such equipment, one hundred percent (100%) of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for refurbishment and the price another dealer will pay for such equipment, and ninety percent (90%)

of the current net parts cost on new, unsold, undamaged repair parts, that had previously been purchased from the supplier and held by the dealer on the date that the dealer agreement terminates or expires. Notwithstanding anything to the contrary contained herein, demonstrators with less than fifty (50) hours, for machines with hour meters, of use will be considered new, unsold, undamaged equipment subject to repurchase under this paragraph;

2. A sum equal to five percent (5%) of the current net parts price of all repair parts returned to compensate the dealer for the handling, packing and loading of such repair parts for return to the supplier; provided, however, the five percent (5%) will not be paid or credited to the dealer if the supplier elects to perform the handling, packing and loading of the repair parts itself;

3. The fair market value of any specific data processing hardware or software that the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including computer equipment required and approved by the supplier to communicate with the supplier. Fair market value of property subject to repurchase pursuant to this paragraph will be deemed to be the acquisition cost thereof, including any shipping, handling and set-up fees, less straight line depreciation of the acquisition cost over three (3) years. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software will be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier; or

4. A sum equal to seventy-five (75%) of the net cost, including shipping, handling and set-up fees, of all specialized service or repair tools previously purchased pursuant to requirements of the supplier within fifteen (15) years prior to the date of the applicable notification of termination of the dealer agreement. The specialized service or repair tools must be unique to the supplier's product line and must be complete and in good operating condition.

B. Upon the payment or allowance of credit to the dealer's account of the sums required by this section, the title to all inventory purchased hereunder shall pass to the supplier making such payment, and the supplier shall be entitled to the possession of the inventory. All payments or allowances of credit due dealers shall be paid or credited within ninety (90) days after receipt by the supplier of property required to be repurchased hereunder. Any payments or allowances of credit due dealers that are not paid within the ninety-day period will accrue interest at the maximum rate allowed by law. The supplier may withhold payments due under this subsection during the period of time in which the dealer fails to comply with its contractual obligations to remove any signage indicating that the dealer is an authorized dealer of the supplier.

C. If any supplier refuses to repurchase any inventory covered under the provisions of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act after termination or discontinuance of the dealer agreement, the supplier will be civilly liable to the dealer for one hundred ten percent (110%) of the amount that would have been due for the inventory if the supplier had timely complied with this act, any freight charges paid by the dealer, interest accrued, and the dealer's actual costs of any court or arbitration proceeding, including costs for attorney fees and costs for arbitrators.

D. The supplier and dealer will each pay fifty percent (50%) of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this act.

E. Notwithstanding any provision to the contrary in the Uniform Commercial Code adopted by this state, the dealer will retain title to and have a first and prior lien against all inventory returned by the dealer to the supplier under the provisions of this act until the dealer is paid all amounts owed by the supplier for the repurchase of such inventory required under the provisions of this act and the supplier shall hold the proceeds of such inventory in trust for the benefit of the dealer.

F. The provisions of this section shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the dealer, and any repurchase hereunder shall not be subject to the provisions of the bulk sales law or to the claims of any secured or unsecured creditors of the supplier or any assignee of the supplier until such time as the dealer has received full payment or credit, as applicable, due hereunder.

G. The provisions of this section shall not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement and such termination is without good reason. A dealer has good reason to terminate the dealer agreement for any of the following reasons:

1. The death or disability of a majority owner of a dealership;
2. The dealership terminates the dealer agreement and:
    a. substantially all of the dealership assets or all shares of stock of the dealership are sold to a new owner, and
    b. no owner of the terminated dealership continues to own an interest in the continuing dealership;
3. The filing of bankruptcy by or against the dealership which has not been discharged within thirty (30) days after the filing, the appointment of a receiver or assignment for the benefit of creditors; or
4. The specialty agricultural equipment supplier:
    a. abandons the market or withdraws from the market by no longer selling to the dealer a type of equipment

previously sold to the dealer that constituted a material part of the specialty agricultural equipment sold by such supplier,

b. consistently sells product to the dealer that is defective or breaches the implied warranty of merchantability,

c. consistently fails to provide adequate product support for the type and use of the product, which includes, but is not limited to, technical assistance, operator and repair manuals, and part lists and diagrams,

d. consistently fails to provide adequate training, required by such supplier, for maintenance, repair, or usage of such supplier's product,

e. consistently fails to provide marketing and marketing support for such supplier's product and marketing is a requirement of the dealer contract,

f. consistently fails to meet such supplier's warranty obligations to the dealer as required by contract or law including obligations under the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act,

g. engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare or the reputation of the dealer,

h. made material misrepresentations or falsification of any record, or

i. breached the dealer agreement or a violated a provision of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act.

Nothing in this subsection shall be construed to limit a specialty agricultural equipment supplier's obligation to repurchase a dealer's inventory as provided in this section if such supplier terminates or otherwise discontinues a dealer agreement.
Added by Laws 1982, c. 274, § 2, operative Oct. 1, 1982. Amended by Laws 1991, c. 51, § 3, emerg. eff. April 9, 1991; Laws 1995, c. 110, § 1, eff. Nov. 1, 1995; Laws 2011, c. 156, § 10, eff. Nov. 1, 2011.

§15-247. Exemptions.

The provisions of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act shall not require the repurchase from a dealer of:

1. Any repair part which is in a broken or damaged package; provided, however, the supplier will be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to eighty-five percent (85%) of the current net parts cost for the repair part, if the aggregate current net parts cost for

the entire package of repair parts is Seventy-five Dollars ($75.00) or higher;

2. Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

3. Any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title free and clear of all claims, liens and encumbrances unless such inventory will be free and clear of all claims, liens and encumbrances immediately upon payment by the supplier of amounts due herein to such lien holders;

4. Any inventory which the dealer desires to keep, provided the dealer has a contractual right to do so;

5. Any equipment or repair parts which are not in new, unsold, undamaged, complete condition, subject, however, to the provisions of this act relating to the demonstrators;

6. Any equipment delivered to the dealer prior to the beginning of the thirty-six-month period immediately preceding the date of notification of termination;

7. Any equipment or repair parts which were ordered by the dealer on or after the date of notification of termination;

8. Any equipment or repair parts which were acquired by the dealer from any source other than the supplier unless such equipment or repair parts were ordered from, or invoiced to the dealer by, the supplier; or

9. Any equipment or repair parts which are not returned to the supplier within ninety (90) days after the later of:

a. the effective date of termination of a dealer agreement, and

b. the date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return policy; provided, however, this paragraph will not be applicable to a dealer if the supplier did not give the dealer notice of the ninety-day deadline at the time the applicable notice of termination was sent to the dealer.

Added by Laws 1982, c. 274, § 3, operative Oct. 1, 1982. Amended by Laws 1991, c. 51, § 4, emerg. eff. April 9, 1991; Laws 2011, c. 156, § 11, eff. Nov. 1, 2011.

§15-248. Remedies.

If any supplier violates any provision of this act, a dealer may bring an action against such supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including, but not limited to, damages for lost profits, together with the actual costs of the action, including the dealer's attorney and paralegal fees and costs of arbitrators, and the dealer also may be granted injunctive relief against unlawful

termination. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.
Added by Laws 1982, c. 274, § 4, operative Oct. 1, 1982. Amended by Laws 2011, c. 156, § 12, eff. Nov. 1, 2011.

§15-249. Waiver - Choice of law - Attorney's fees - Validity.
An attempted waiver of a provision of this act or application of this act shall be void. Any provision in a dealer agreement that purports to elect the application of the law of a state other than this state shall be void. Any provision in a dealer agreement that requires a dealer to pay attorney fees incurred by a supplier shall be void.
Added by Laws 1982, c. 274, § 5, operative Oct. 1, 1982. Amended by Laws 2011, c. 156, § 13, eff. Nov. 1, 2011.

§15-250. Application of act.
The provisions of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act shall apply to:
1. All dealer agreements now in effect which have no expiration date and are continuing contracts; and
2. All other dealer agreements entered into or renewed after November 1, 2011.
All other dealer agreements shall be governed by the law as it existed prior to this act.
Added by Laws 1982, c. 274, § 6, operative Oct. 1, 1982. Amended by Laws 1997, c. 112, § 3, eff. Nov. 1, 1997; Laws 2011, c. 156, § 14, eff. Nov. 1, 2011.

§15-250A. Supplemental provisions.
The provisions of the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act shall be supplemental to any dealer agreement between the dealer and the supplier which provides the dealer with greater protection. The dealer can elect to pursue its contract remedy or the remedy provided by state law, or both, and an election by the dealer to pursue such remedies shall not bar its right to exercise any other remedies that may be granted at law or in equity.
Added by Laws 1998, c. 82, § 3, eff. Nov. 1, 1998. Amended by Laws 2011, c. 156, § 15, eff. Nov. 1, 2011.

§15-251. Civil actions - Attorney fees.
Any person who is injured in his business or property by a violation of this act or because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this act, may bring a civil action in a court of competent jurisdiction in this state to enjoin further violations and to

recover the damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.
Added by Laws 1982, c. 274, § 7, operative Oct. 1, 1982.

§15-262. Repayment must be made in current funds.
Except when the parties otherwise expressly agree in writing, a borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.
R.L. 1910, § 1000. Amended by Laws 1996, c. 56, § 29, emerg. eff. April 8, 1996.

§15-263. Loan presumes interest.
Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.
R.L.1910, § 1001.

§15-264A. Interest defined.
Interest is the compensation allowed for the use or forbearance or detention of money, or its equivalent.
Laws 1970, c. 224, § 1, emerg. eff. April 15, 1970.

§15-265. Interest prescribed presumed annual.
When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.
R.L.1910, § 1003.

§15-266. Legal and contract rates of interest.
The legal rate of interest shall be six percent (6%) in the absence of any contract as to the rate of interest, and by contract parties may agree to any rate as may be authorized by law, now in effect or hereinafter enacted.
R.L.1910, § 1004; Laws 1970, c. 224, § 3, emerg. eff. April 15, 1970.

§15-272. Banks to report interest rates - Cancellation of charter for violating usury laws - Procedure.
It shall be the duty of the officers of all state banks, organized and doing business under and by virtue of the laws of the state, to make a sworn quarterly report to the Bank Commissioner, setting forth the rate of interest charged, retained, reserved or collected upon the loans made in excess of the legal or contract rate of interest during the quarter for which said report is made, and such other detailed information as the Bank Commissioner may require concerning rates of interest charged, and all such reports as show the rates of interest exceeding ten percent (10%) per annum have been

charged, shall be published in the annual report of the Bank Commissioner. Provided, that when the report of any bank shall disclose that such bank is willfully loaning money in violation of the interest laws of the state, it shall be his duty to immediately report such violation to the Governor, who may direct the Bank Commissioner to bring suit, through the Attorney General, in a court of competent jurisdiction in the county where the bank is located, to cancel the charter of such bank and the judgment of the court on the trial of said issue shall find the defendant bank guilty or not guilty, and if the judgment is guilty it shall further provide for the cancellation of the charter of said bank and the liquidation of the assets of said bank as the law now provides in cases of insolvent banks, from which judgment either party shall have the right of appeal to the Supreme Court, as in civil cases. Upon such appeal being filed, the Supreme Court shall hear and determine same as an advanced case.
Laws 1916, c. 20, p. 27, § 5.

§15-275. Interest on contracts after breach.

Any legal rate of interest, stipulated by a contract, remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.
R.L.1910, § 1009.

§15-276. Action to collect upon obligation to repay money after default - Attorney fees.

In any civil action to collect upon an obligation to repay money after default, the party prevailing on such cause of action shall be awarded a reasonable attorney's fee. This attorney's fee shall be assessed by the court as costs against the losing party.
Added by Laws 1982, c. 256, § 2, operative Oct. 1, 1982.

§15-291. Loan for use defined.

A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time without reward for its use.
R.L.1910, § 1010.

§15-292. Title and increase belong to lender.

A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.
R.L.1910, § 1011.

§15-293. Care by borrower.

A borrower for use must use great care for the preservation in safety in good condition of the thing borrowed.

R.L.1910, § 1012.

§15-294. Living animals - Care required of borrower.
One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.
R.L. 1910, § 1013.

§15-295. Degree of skill.
A borrower for use is bound to have and to exercise such skill in the care of the thing borrowed, as he causes the lender to believe him to possess.
R.L.1910, § 1014.

§15-296. Repair of injuries.
A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.
R.L.1910, § 1015.

§15-297. Uses limited.
The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.
R.L.1910, § 1016.

§15-298. Relending by borrower forbidden.
The borrower of a thing for use must not part with it to a third person without the consent of the lender.
R.L.1910, § 1017.

§15-299. Expenses during loan.
The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.
R.L.1910, § 1018.

§15-300. Lender liable for defects.
The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.
R.L.1910, § 1019.

§15-301. Lender may require return, when.
The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such

arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.
R.L.1910, § 1020.

§15-302. Demand for return, necessity of - Place of return.

If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded. The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.
R.L.1910, § 1021.

§15-303. Loan for exchange.

A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.
R.L.1910, § 1022.

§15-304. Loan for use or exchange.

A loan which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.
R.L.1910, § 1023.

§15-305. Title in loan for exchange - Expenses - Increase.

By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.
R.L.1910, § 1024.

§15-306. Lender cannot modify contract.

A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.
R.L.1910, § 1025.

§15-321. Guaranty defined.

A guaranty is a promise to answer for the debt, default or miscarriage of another person.
R.L.1910, § 1026.

§15-322. Consent of principal unnecessary.

A person may become guarantor even without the knowledge or consent of the principal.
R.L.1910, § 1027.

§15-323. Consideration.
Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms, with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.
R.L.1910, § 1028.

§15-324. Guaranty must be in writing - Consideration need not be expressed.
Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.
R.L.1910, § 1029.

§15-325. When promise deemed original.
A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:
1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise.
2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety.
3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.
4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.
5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his, or for a new consideration,

and in connection with such transfer enters into a promise respecting such instrument.
R.L.1910, § 1030.

§15-326. Notice of acceptance of guaranty, necessity of.
A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.
R.L.1910, § 1031.

§15-327. Terms implied where principal contract is not completed.
In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.
R.L.1910, § 1032.

§15-328. Guaranty of solvency.
A guaranty to the effect that an obligation is good or collectable imports that the debtor is solvent, and that the demand is collectable by the usual legal proceedings, if taken with reasonable diligence.
R.L.1910, § 1033.

§15-329. Guaranty of solvency - Failure to take proceedings.
A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.
R.L.1910, § 1034.

§15-330. Removal from state deemed equivalent to insolvency.
In the cases mentioned in the second preceding section the removal of the principal from the State leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor.
R.L.1910, § 1035.

§15-331. Guaranty deemed unconditional.
A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.
R.L.1910, § 1036.

§15-332. Guarantor liable on default of principal without notice.

A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.
R.L.1910, § 1037.

§15-333. Guaranty of conditional obligation.
Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.
R.L.1910, § 1038.

§15-334. Limitation of guarantor's obligation.
The obligation of a guarantor must be neither larger in amount, nor in other respects more burdensome than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation.
R.L.1910, § 1039.

§15-335. Guarantor not liable on unlawful contract - Disability of principal.
A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.
R.L.1910, § 1040.

§15-336. Continuing guaranty.
A guaranty relating to a future liability of the principal, under successive transactions, which either continues his liability or from time to time renews it after it has been satisfied, is called a continuing guaranty.
R.L.1910, § 1041.

§15-337. Revocation of continuing guaranty.
A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transaction which he does not renounce.
R.L.1910, § 1042.

§15-338. Exoneration of guarantor.
A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered

in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.
R.L.1910, § 1043.

§15-339. Void promise of creditor as altering obligation, etc.

A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.
R.L.1910, § 1044.

§15-340. Rescission of new agreement as restoring guarantor's liability.

The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.
R.L.1910, § 1045.

§15-341. Partial satisfaction as reducing guarantor's obligation.

The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of a principal, but does not otherwise affect it.
R.L.1910, § 1046.

§15-342. Delay of creditor does not exonerate.

Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.
R.L.1910, § 1047.

§15-343. Liability of indemnified guarantor.

A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.
R.L.1910, § 1048.

§15-344. Discharge of principal by operation of law as affecting guarantor.

A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.
R.L.1910, § 1049.

§15-371. Surety defined.

A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.
R.L.1910, § 1050.

§15-372. Apparent principal may show himself surety.
One who appears to be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.
R.L.1910, § 1051.

§15-373. Liability of surety.
A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.
R.L.1910, § 1052.

§15-374. Rules of interpretation.
In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.
R.L.1910, § 1053.

§15-375. Judgment does not change relation.
Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.
R.L.1910, § 1054.

§15-376. Exoneration of surety by performance or offer thereof.
Performance of the principal obligation, or an offer of such performance duly made as provided in this chapter exonerates a surety.
R.L.1910, § 1055.

§15-377. Exoneration of surety generally.
A surety is exonerated:
1. In like manner with a guarantor.
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.
R.L.1910, § 1056.

§15-378. Surety has right of guarantor.

A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

R.L.1910, § 1057.

§15-379. Proceedings against principal, surety may require.

A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

R.L.1910, § 1058.

§15-380. Compelling principal to perform obligation.

A surety may compel his principal to perform the obligations when due.

R.L.1910, § 1059.

§15-381. Reimbursement of surety.

If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by this act, except as prescribed by the next section.

R.L.1910, § 1060.

§15-382. Surety's rights against principal and cosureties.

A surety, upon satisfying the obligations of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such.

R.L. 1910, § 1061.

§15-383. Security, rights of surety as to.

A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor or by a cosurety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

R.L.1910, § 1062.

§15-384. Application of hypothecated property.

Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

R.L.1910, § 1063.

§15-385. Creditor entitled to all securities.

A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.
R.L.1910, § 1064.

§15-421. Indemnity defined.

Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.
R.L.1910, § 1074.

§15-422. Indemnity against unlawful act void.

An agreement to indemnify a person against an act thereafter to be done is void if the act be known by such person at the time of doing it to be unlawful.
R.L.1910, § 1075.

§15-423. Indemnity against unlawful act valid if act already done.

An agreement to indemnify a person against an act already done is valid even though the act was known to be wrongful unless it was a felony.
R.L.1910, § 1076.

§15-424. Agents' acts covered by indemnity agreements.

An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.
R.L.1910, § 1077.

§15-425. Several persons means each.

An agreement to indemnify several persons applies to each, unless a contrary intention appears.
R.L.1910, § 1078.

§15-426. Joint and separate liability.

One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.
R.L.1910, § 1079.

§15-427. Rules for interpretation.

In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity; but the person indemnified has the right to conduct such defense, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action of proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which, by want of ordinary care, he failed to establish in the action.

R.L.1910, § 1080.

§15-428. Reimbursement of indemnitor.

Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

R.L.1910, § 1081.

§15-429. Bail sureties.

Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

R.L.1910, § 1082.

§15-430. Governed by law of bail.

The obligations of bail are governed by the statutes specially applicable thereto.
R.L.1910, § 1083.

§15-441. Classes of bailments.
A bailment may be voluntary or involuntary; and for safekeeping or exchange.
R.L.1910, § 1084.

§15-442. Voluntary bailments.
A voluntary bailment is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party; the person giving is called the bailor and the person receiving the bailee.
R.L.1910, § 1085.

§15-443. Involuntary bailments.
An involuntary bailment is made:
First. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,
Second. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person. R.L.1910, § 1086.

§15-444. Involuntary bailee must take charge if able.
The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it if able to do so.
R.L.1910, § 1087.

§15-445. Bailment for safekeeping.
A bailment for safekeeping is one in which the bailee is bound to return the identical thing deposited.
R.L.1910, § 1088.

§15-446. Bailment for exchange.
A bailment for exchange is one in which the bailee is only bound to return a thing corresponding in kind to that which is deposited.
R.L.1910, § 1089.

§15-447. Redelivery on demand.
A bailee must deliver the thing to the person for whose benefit it was deposited, on demand, whether the bailment was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner

thereof, or by the act of the law, and has given the notice required by Section 1093.
R.L.1910, § 1090.

§15-448. Demand necessary.
A bailee is not bound to deliver a thing deposited without demand, even where the bailment was made for a specified time.
R.L.1910, § 1091.

§15-449. Place of delivery.
A bailee must deliver the thing deposited at the residence or place of business of the bailor, as may be most convenient for him.
R.L. 1910, § 1092.

§15-450. Notice to owner of adverse claim.
A bailee must give prompt notice to the person for whose benefit the bailment was made, of any proceedings taken adversely to his interest in the thing bailed which may tend to excuse the bailee from delivering the thing to him.
R.L.1910, § 1093.

§15-451. Notice to true owner of wrongful detention.
A bailee who believes that a thing deposited with him is wrongfully detained from its true owner may give him notice of the bailment; and if, within a reasonable time afterwards, he does not claim it, and sufficiently establish his right thereto, and indemnify the bailee against the claim of the bailor, the bailee is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the bailor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.
R.L.1910, § 1094.

§15-452. Delivery to disagreeing owners.
If a thing bailed is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the balee may deliver to each his proper share thereof, if it can be done without injury to the thing.
R.L.1910, § 1095.

§15-453. Bailor must be indemnified for damages.
A bailor must indemnify the bailee:
First. For all damage caused to him by the defects or vices of the thing bailed; and,
Second. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

R.L.1910, § 1096.

§15-454. Care of animals.

A bailee of living animals must provide them with suitable food and shelter, and treat them kindly.

R.L.1910, § 1097.

§15-455. Use of thing bailed.

A bailee may not use the thing bailed, or permit it to be used, for any purpose, without the consent of the bailor. He may not, if it is purposely fastened by the bailor, open it without the consent of the latter, except in case of necessity.

R.L.1910, § 1098.

§15-456. Damages for wrongful use.

A bailee is liable for any damage happening to the thing bailed during his wrongful use thereof, unless such damage must inevitably have happened, though the property had not been thus used.

R.L.1910, § 1099.

§15-457. Sale of perishing thing.

If a thing bailed is in actual danger of perishing before instructions can be obtained from the bailor, the bailee may sell it for the best price obtainable, and retain the proceeds as a bailment, giving immediate notice of his proceedings to the bailor.

R.L.1910, § 1100.

§15-458. Presumed negligence for injury.

If a thing is lost or injured during its deposit, and the bailee refuse to inform the bailor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the bailee shall be presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

R.L.1910, § 1101.

§15-459. Duties and liabilities of bailee rendering services.

The duties and liabilities of a bailee by whom services are rendered or of whom services are required on the thing bailed are subject to the general laws of the state, and may be regulated by contract.

R.L.1910, § 1102.

§15-460. Measure of damages.

The liabilities of a bailee for negligence shall not exceed the amount which he is informed by the bailor, or has reason to suppose, the thing bailed is worth.

R.L.1910, § 1103.

§15-461. Gratuitous bailment.

A gratuitous bailment is a bailment for which the bailee receives no consideration beyond the mere possession of the thing bailed.
R.L.1910, § 1104.

§15-462. Involuntary bailment is gratuitous.

An involuntary bailment is gratuitous, the bailee being entitled to no reward.
R.L.1910, § 1105.

§15-463. Gratuitous bailee - Slight care.

A gratuitous bailee must use at least slight care for the preservation of the thing bailed.
R.L.1910, § 1106.

§15-464. Gratuitous bailee - When duties cease.

The duties of a gratuitous bailee cease:

First. Upon his restoring the thing bailed to its owner; or,

Second. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary bailee, under the first subdivision of Section 1086, cannot give such notice until the emergency that gave rise to the bailment is past.
R.L.1910, § 1107.

§15-465. Bailment for hire.

A bailment not gratuitous is called a bailment for hire. The bailee in such case is called a bailee for hire.
R.L.1910, § 1108.

§15-466. Bailee for hire - Ordinary care required.

A bailee for hire must use at least ordinary care for the preservation of the thing bailed.
R.L.1910, § 1109.

§15-467. Rate of compensation.

In the absence of a different agreement or usage, a bailee for hire is entitled to one (1) week's compensation for the sustenance and shelter of living animals during any fraction of a week, and to half a month's compensation for the storage of any other property during any fraction of a half month.
R.L.1910, § 1110.

§15-468. Termination of bailment.

In the absence of an agreement as to the length of time during which a bailment is to continue, it may be terminated by the bailor at any time, and by the bailee upon reasonable notice.
R.L.1910, § 1111.

§15-469. Termination on payment of full compensation.
Notwithstanding an agreement respecting the length of time during which a bailment is to continue, it may be terminated by the bailor on paying all that would become due to the bailee in case of the bailment so continuing.
R.L.1910, § 1112.

§15-470. Things intentionally abandoned.
The provisions of this article have no application to things which have been intentionally abandoned by their owners.
R.L.1910, § 1123.

§15-471. Bailment for exchange transfers title.
A bailment for exchange transfers to the bailee the title to the thing bailed, and creates between him and the bailor the relation of debtor and creditor merely.
R.L.1910, § 1124.

§15-501. Liability and lien of keeper of an inn or boarding house.
An innkeeper or keeper of a boarding house is liable for all losses of, or injuries to, personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn or boarding house, and upon such property the innkeeper or keeper of a boarding house has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessaries by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed for the sale of pledged property.
R.L.1910, § 1113.

§15-503. Hotels, apartment hotels, inns - Guest rooms to have suitable locks.
It shall be the duty of the proprietor, manager, or operator of any hotel, apartment hotel, or inn to equip the doors of all guest rooms in any hotel, apartment hotel or inn operated by him, with suitable night latches, night chains, or bolts, so placed on the inside of such doors, as to prevent such doors from being opened from the outside by key or otherwise.
Laws 1939, p. 341, § 1.

§15-503a. Safe, vault or other depository - Notice - Liability to guest for loss of property.

Whenever the proprietor, manager or operator of any hotel, apartment hotel or inn shall provide a safe, vault or other depository for the safekeeping of any money, jewels, ornaments, bank notes, bonds, negotiable securities, or other valuable papers, precious stones, railroad tickets, articles of gold or silver manufacture, or other valuable property of small compass, belonging to guests of said hotel, apartment hotel or inn, and shall notify the guests thereof by posting a notice in a public and conspicuous place and manner in the office or public rooms, or in the public parlors, or in the guest rooms for said hotel, apartment hotel or inn, stating the fact that such safe, vault or other depository is provided, in which such property may be deposited, and if such guests shall neglect to deliver such property to the person in charge of such office, for deposit in such safe, vault or other depository, the proprietor, manager or operator of such hotel, apartment hotel or inn shall not be liable for any loss of any such property, sustained by such guest, whether by negligence of such proprietor, manager or operator, or his, her, or its servants, or employees, or by fire, theft, burglary or any other cause. Such guest shall, at the time of delivering such property to the person in charge of the office of such hotel, apartment hotel or inn, advise such person of the actual value of such property, and no proprietor, manager or operator or person in charge of the office of such hotel, apartment hotel or inn shall be required to receive property on deposit for safekeeping exceeding Three Hundred Dollars ($300.00) in value; and in case of loss of any such property so deposited for safekeeping, the proprietor, manager or operator of such hotel, apartment hotel or inn shall be liable only for the actual market or pecuniary value of such property, in no event exceeding the sum of Three Hundred Dollars ($300.00). Provided, that the proprietor, manager or operator of any hotel, apartment hotel or inn may, by special agreement in writing with any such guest or guests, receive property of greater value than Three Hundred Dollars ($300.00) and assume liability as shall be provided for in such written agreement.

Laws 1939, p. 342, § 2.

§15-503b. Liability for loss of or damage to property of guest.

Except as provided for in Section 2 of this act, whenever the proprietor, manager or operator of any hotel, apartment hotel or inn shall have complied with the provisions of Section 1 of this act such proprietor, manager or operator shall not be liable for the loss of or damage to personal property brought into such hotel, apartment hotel or inn by any of the guests thereof exceeding Two Hundred Fifty Dollars ($250.00) in value, whether such loss or damage is occasioned by the negligence of such proprietor, manager or operator, or his,

her or its servants, or employees or otherwise; nor shall such proprietor, manager or operator be liable for the loss of or damages to any merchandise samples or merchandise for sale unless the guests bringing such merchandise into such hotel, apartment hotel or inn shall have given such proprietor, manager or operator prior written notice of having the same in his possession, together with the value thereof, and receipt of which notice shall have been acknowledged in writing, but in no event shall such liability exceed the sum of One Hundred Dollars ($100.00) for each trunk and its contents; the sum of Seventy-five Dollars ($75.00) for each valise and its contents; the sum of Twenty-five Dollars ($25.00) for each package, box or bundle; the sum of Fifty Dollars ($50.00) for all other miscellaneous effects and property including wearing apparel, but in no event shall the total liability exceed the sum of Two Hundred Fifty Dollars ($250.00), unless such proprietor, manager or operator shall have contracted in writing with such guest to assume a greater liability. In case of the loss of or damage to any property left in any hotel, apartment hotel or inn by a guest, after he has departed therefrom, and has ceased to be a guest thereof, the liability of such proprietor, manager or operator shall be that of "gratuitous bailee", and in such case the extent of such liability shall be limited to not more than the sum of Fifty Dollars ($50.00). In case of loss or damage to any property while being transported to or from any hotel, apartment hotel or inn by the proprietor, manager or operator thereof, for or on behalf of such guest, the liability of such proprietor, manager or operator shall be limited to the sum of One Hundred Dollars ($100.00) for each trunk and its contents; the sum of Seventy-five Dollars ($75.00) for each valise and its contents; the sum of Twenty Five Dollars ($25.00) for each package, box or bundle; the sum of Fifty Dollars ($50.00) for all other miscellaneous effects and property, including wearing apparel, but in no event shall such liability exceed the sum of Two Hundred Fifty Dollars ($250.00), unless such proprietor, manager or operator shall have contracted in writing with such guest to assume a greater liability.
Laws 1939, p. 342, § 3.

§15-503c. "Apartment hotel" defined.

An apartment hotel, within the meaning of this act, includes a hotel wherein apartments are rented for fixed periods of time, either furnished or unfurnished, to the occupants of which the proprietor, manager or operator thereof supplies food, if required.
Laws 1939, p. 343, § 4.

§15-503d. "Guest" defined.

"Guest", within the meaning of this act, shall include transient guests, permanent guests, tenants, lodgers and patrons who have

registered at and have been assigned a room in such hotel, apartment hotel or inn.
Laws 1939, p. 343, § 5.

§15-504. Short title.
This act shall be known and may be cited as the "Oklahoma Innkeeper Rights Act".
Added by Laws 1994, c. 79, § 1, eff. Sept. 1, 1994.

§15-505. Definitions.
As used in the Oklahoma Innkeeper Rights Act:
1. "Innkeeper" means:
a. the owner of a lodging establishment,
b. the operator of a lodging establishment,
c. the manager of a lodging establishment, or
d. the keeper of a lodging establishment;
2. "Lodging establishment" means:
a. a hotel,
b. a motel,
c. a resort,
d. a bed and breakfast establishment,
e. a boarding house,
f. a furnished apartment house, or
g. other building which is kept, used or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy; and
3. "Minor" means a person under the age of eighteen (18) years.
Added by Laws 1994, c. 79, § 2, eff. Sept. 1, 1994.

§15-506. Right to refuse accommodation - Financial guarantees - Limitation on number of occupants - Immunity.
A. An innkeeper shall have the right to refuse or deny any accommodations, facilities or privileges of a lodging establishment to any person who is unwilling or unable to pay for accommodations and services of the lodging establishment. The innkeeper shall have the right to require the prospective guest to demonstrate their ability to pay by cash, valid credit card or a valid check. The innkeeper may require a parent of a minor or other responsible party to:
1. Accept in writing liability of the guest room costs, taxes, all charges by the minor and any damages to the guest room or its furnishings caused by the minor while a guest at the lodging establishment; and
2. Provide the innkeeper with a valid credit card number to cover the guest room costs, taxes, charges by the minor and any damages to the guest room or its furnishings, caused by the minor; or

3. Give the innkeeper:
   a. an advance cash payment to cover the guest room cost and taxes for all room nights reserved for the minor, and
   b. a cash deposit towards the payment of any charges of the minor or any damages to the guest room or its furnishings, which cash deposit will be refunded to the extent not used to cover any charges or damages as determined by the innkeeper following room inspection at check-out.

B. A lodging establishment shall have the right to limit the number of persons who shall occupy any particular guest room in the lodging establishment.

C. An innkeeper refusing or denying accommodations, facilities or privileges of a lodging establishment for any of the reasons specified in this section shall not be liable in any civil or criminal action or for any fine or penalty based upon the refusal or denial, except that accommodations, facilities or privileges of a lodging establishment shall not be refused or denied based upon the race, creed, color, national origin, sex, disability or marital status of a person.

Added by Laws 1994, c. 79, § 3, eff. Sept. 1, 1994.

§15-507. Damages.

In an action involving damage to a lodging establishment room or its furnishings, the court may order the person who rented the lodging establishment room, the person who caused the damage to the lodging establishment room or the parent of the minor or other responsible party to do the following:

1. Pay restitution for any damages suffered by the owner or operator of the lodging establishment, which damages may include any loss of revenue suffered by the lodging establishment resulting from the inability of the innkeeper to rent or lease the room during the period of time the lodging establishment is being repaired; and

2. Pay damages or restitution to any other person who is injured or whose property is damaged. The parents of other responsible parties shall be liable for acts of the minor in violation of this section which cause damages to the lodging establishment room or furnishings or cause injury to persons on the lodging establishment property.

Added by Laws 1994, c. 79, § 4, eff. Sept. 1, 1994.

§15-508. Ejection of guests.

An innkeeper may eject a person from the lodging establishment premises for any of the following:

1. Nonpayment of the lodging establishment charges for accommodations or services;

2. The minor is disorderly or visibly intoxicated, so as to create a public nuisance;

3. The innkeeper reasonably believes that the minor is using the premises for unlawful purposes including, but not limited to, the unlawful use or possession of controlled substances or for the consumption of alcohol by any person under the age of twenty-one (21) years in violation of any statute, ordinance or regulation;

4. Violations of any federal, state or local laws or regulations relating to the lodging establishment; or

5. Violations of any rule of the lodging establishment which is posted in a conspicuous place and manner in the lodging establishment, however, no such rule may authorize the innkeeper to eject or to refuse or deny service or accommodations to a person because of race, creed, color, national origin, sex, disability or marital status.

Added by Laws 1994, c. 79, § 5, eff. Sept. 1, 1994.

§15-509. Notice to guests.

The innkeeper shall post a copy of the Oklahoma Innkeeper Rights Act together with all rules of the lodging establishment in a conspicuous place at or near the guest registration desk and on the inside of the entrance door of any guest room.

Added by Laws 1994, c. 79, § 6, eff. Sept. 1, 1994.

§15-511. Finder a bailee, when.

One who finds a thing lost is not bound to take charge of it; but if he does so, he is thenceforward a bailee for the owner, with the rights and obligations of a bailee for hire.

R.L.1910, § 1115.

§15-512. Finder must notify owner if known.

If the finder of a thing knows or suspects who the owner is, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

R.L.1910, § 1116.

§15-513. Claimant must prove ownership.

The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

R.L.1910, § 1117.

§15-514. Compensation and reward for service.

The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any

other service necessarily performed by him about it, and to a reasonable reward for keeping it.
R.L.1910, § 1118.

§15-515. Exoneration of finder from liability by storing with another.

The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.
R.L.1910, § 1119.

§15-516. Finder may sell, when.

The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two-thirds of its value.
R.L.1910, § 1120.

§15-517. Manner of sale.

A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.
R.L.1910, § 1121.

§15-518. Surrender of thing to finder.

The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.
R.L.1910, § 1122.

§15-561. "Contract of sale," "person," defined.

For the purpose of this Act, the term "contract of sale" shall be held to include sales purchases, agreements of sale, agreements to sell and agreements to purchase; that the word "person" wherever used in this act shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships and corporations.
Laws 1917, c. 97, p. 146, § 1.

§15-562. Contract of sale valid, when.

All contracts of sales for future delivery of cotton, grain, stocks or other commodities (1) made in accordance with the rules of any board of trade, exchange or similar institution where such contracts of sale are executed and (2) actually executed on the floor of such board of trade, exchange or similar institution and performed

or discharged according to the rules thereof; and (3) when such contracts of sale are placed with or through a regular member in good standing of a cotton exchange, grain exchange, board of trade or similar institution organized under the laws of the State of Oklahoma or any other state shall be, and they are hereby declared to be valid and enforceable in the courts of this state according to their terms. Provided, that contracts of sale for future delivery of cotton in order to be valid and enforceable as provided herein must not only conform to the requirements of clauses (1) and (2) of this section, but must also be made subject to the provisions of the United States Cotton Futures act, approved August 11th, 1916; provided further, that if this clause should for any reason be held inoperative then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirements of clauses one and two of this section.
Laws 1917, c. 97, p. 146, § 2.

§15-563. Brokers - Parties liable.

Any broker, agent or any other person making advances to or for account of any party to any contract falling within and satisfying the provisions of the preceding section shall be entitled to recover the amount of such advances from the party to, or for account of whom, the advances were made.
Laws 1917; c. 97, p. 147, § 3.

§15-564. Contract of sale - When invalid.

Any contract of sale for the future delivery of cotton, grain, stocks or other commodities, which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange or similar institutions, upon which contracts of sale for future delivery are executed and dealt in without any actual bonifide execution and the carrying out or discharge of such contracts upon the floor of such exchange, board of trade, or similar institution in accordance with the rules thereof, shall be null and void and unenforceable in any court of this state, and no action shall lie thereon at the suit of any party thereto.
Laws 1917, c. 97, p. 147, § 4.

§15-565. Bucket shops defined and prohibited.

A "bucket shop" is hereby defined to be and mean any place of business wherein are made contracts of the sort or character denounced by the preceding Section 4, of this act, and the maintenance or operation of a bucket shop at any point in this state is hereby prohibited.
Laws 1917, c. 97, p. 147, § 5.

§15-566. Prima facie evidence of illegality of contract and operation of bucketshop.

Every person shall furnish upon demand to any principal for whom such person has executed any contract of sale for the future delivery of any cotton, grain, stocks or other commodities a written instrument setting forth the name and location of the exchange, board of trade or similar institution upon which such contract has been executed, the date of execution of the contract and the name and address of the persons with whom such contract was executed and if such person shall refuse or neglect to furnish such statement upon reasonable demand, such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Section 4, of this act, and that the person who executed it was engaged in the maintenance and operation of a "bucket shop" within the provisions of Section 7, of this act.
Laws 1917, c. 97, p. 147, § 6.

§15-567. Punishment for violations - Second offenses - Forfeiture of corporate charters.

Any person, either as agent or principal, who enters into or assists in making any contracts of sale of the sort of character denounced by Section 564 of this title for the future delivery of cotton, grain, stocks or other commodities, or who maintains or operates a bucket shop as that term is defined in Section 565 of this title, shall be guilty of a felony, and upon conviction thereof shall be fined in a sum not to exceed One Thousand Dollars ($1,000.00), or be imprisoned in the State Penitentiary not exceeding two (2) years, and any person who shall be guilty of a second offense under this statute in addition to the penalty above prescribed may, upon conviction, be both fined and imprisoned in the discretion of the court, and if a corporation, it shall be liable to forfeiture of all its rights and privileges as such, and the continuance of such establishment after the first conviction shall be deemed a second offense. It shall be the duty of the Attorney General to institute proceedings for the forfeiture of the charter of any corporation making itself liable to such forfeiture under the provisions of this act.
Added by Laws 1917, c. 97, p. 148, § 7. Amended by Laws 1997, c. 133, § 133, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 60, eff. July 1, 1999.
NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 133 from July 1, 1998, to July 1, 1999.

§15-568. Organization of exchanges, boards of trade, and similar institutions - Rules and regulations - Inspection of books.

There may be organized in any city in the State of Oklahoma voluntary associations to be known as cotton exchanges, grain

exchanges, boards of trade or similar institutions to receive and post quotations on cotton, grain, stocks, bonds and other commodities for the benefit of its members and other persons engaged in the production of cotton, grain and other commodities. Such associations shall be composed of not less than forty (40) members and shall adopt a uniform set of rules and regulations not incompatible with the laws, as are usual for such associations. They shall open their books to the inspection of proper courts and officers of the law when required.
Laws 1917, c. 97, p. 148, § 8.

§15-569. Market quotations and news, right to receive and post - Delivery, etc., contemplated.

Only members of cotton exchanges, grain exchanges, boards of trade or similar institutions organized under the laws of Oklahoma or any other State may provide for their use and the use of their clients, private or public wires from cities in Oklahoma in which such cotton exchanges, grain exchanges, boards of trade, or similar institutions are located to other cities without the State of Oklahoma, where cotton exchanges, grain exchanges, boards of trade, or similar institutions are operated, and may receive over such private or public wires and post for their own use and that of their clients and of any person engaged in the production of cotton, grain or other commodities, market quotations and market news, covering cotton, grain, stocks and other commodities, and transmit for execution contracts of sale for future delivery. In all cases it is contemplated that the delivery of the commodity, purchased or sold, as the case may be, will be carried out by the person or his successor or assignee. Or that the contract for delivery thereof will be performed or discharged according to the rules of the exchange, board of trade, or similar institutions where the contract is executed.
Laws 1917, c. 97, p. 148, § 9.

§15-570. Partial invalidity of act.

If any clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence or paragraph or part thereof directly involved in the controversy, in which such judgment shall have been rendered; and any contract valid under and satisfying the requirements of the remaining clauses, sentences, paragraphs or parts of this act shall be valid and enforceable in the courts of the State.
Laws 1917, c. 97, p. 149, § 11.

§15-598.1. Short title.

This act shall be known and may be cited as the "Unfair Sales Act".
Added by Laws 1949, p. 103, § 1, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 1, eff. Nov. 1, 2013.

§15-598.2. Definitions.

For the purposes of the Unfair Sales Act:

(a) The term "cost to the retailer" means the invoice cost of the merchandise to the retailer or the replacement cost of the merchandise to the retailer, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added (1) freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the retail outlet if done or paid for the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent (3/4 of 1%) of the cost to the retailer as herein defined after adding thereto freight charges but before adding thereto cartage, and taxes, (3) all state and federal taxes not heretofore added to the cost as such, and (4) a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be six percent (6%) of the cost of the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup;

(b) The term "cost to the wholesaler" means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is the lower; less all trade discounts except customary discounts for cash; to which shall be added, (1) freight charges, not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and (2) cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one percent (3/4 of 1%) of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage, and taxes, and (3) all state and federal taxes not heretofore added to the cost as such;

(c) The term "replacement costs" means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within thirty (30) days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity or quantities as the seller's last purchase of said merchandise;

(d) When one or more items advertised, offered for sale, or sold with one or more other items at a combined price, or advertised, offered as a gift, or given with the sale of one or more other items, each and all of the items shall be deemed to be advertised, offered

for sale, or sold, and the price of each item named shall be governed by the provisions of paragraphs (a) or (b) of this section, respectively;

(e) The terms "sell at retail", "sales at retail", and "retail sale" mean and include any transfer for valuable consideration made in the ordinary course of trade or in the usual prosecution of the seller's business of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price;

(f) The terms "sell at wholesale", "sales at wholesale", and "wholesale sales" mean and include any transfer for a valuable consideration made in the ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price;

(g) The term "retailer" means and includes every person, partnership, corporation or association engaged in the business of making sales at retail within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business;

(h) The term "wholesaler" means and includes every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such term shall be applied only to the wholesale portion of such business.

Added by Laws 1949, p. 103, § 2, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 2, eff. Nov. 1, 2013.

§15-598.3. Sales below cost prohibited in certain cases.

It is hereby declared that any advertising, offer to sell, or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in the Unfair Sales Act with the intent and purpose of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, impair and prevent fair competition, injure public welfare, are unfair competition and contrary to public policy and the policy of the Unfair Sales Act, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create a monopoly in any line of commerce.

Added by Laws 1949, p. 105, § 3, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 3, eff. Nov. 1, 2013.

§15-598.4. Punishment for sales below cost.

Any retailer who shall, in contravention of the policy of the Unfair Sales Act, advertise, offer to sell or sell at retail any item of merchandise at less than cost to the retailer as defined in this act; or any wholesaler who shall in contravention of the policy of the Unfair Sales Act, advertise, offer to sell, or sell at wholesale any item of merchandise at less than cost to the wholesaler as defined in the Unfair Sales Act, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than Five Hundred Dollars ($500.00).

Added by Laws 1949, p. 105, § 4, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 4, eff. Nov. 1, 2013.

§15-598.5. Injunctive relief - Damages - Prima facie evidence.

(a) In addition to the penalties provided in the Unfair Sales Act, any person injured by any violation, or who shall suffer injury from any threatened violation of the Unfair Sales Act, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of the Unfair Sales Act shall be established, the court shall enjoin and restrain or otherwise prohibit, such violation or threatened violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the cost of suit. In such action if damages are alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the actual damages sustained by him or her.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of the Unfair Sales Act may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section. Provided the Unfair Sales Act shall not authorize suits or actions against newspapers, radio broadcasters, or other advertising agencies through which such advertisements are published, broadcast or otherwise made.

(c) Evidence of advertisement, offering to sell, or sale of merchandise by any retailer or wholesaler at less than cost to such retailer or wholesaler, shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

Added by Laws 1949, p. 105, § 5, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 5, eff. Nov. 1, 2013.

§15-598.6. Exempted sales.

The provisions of the Unfair Sales Act shall not apply to the following sales at retail or sales at wholesale:

1. Where seasonable merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such;

2. Where perishable merchandise must be sold promptly in order to forestall loss;

3. Where merchandise is imperfect or damaged or is being discontinued and is advertised, marked and sold as such;

4. Where merchandise is sold upon the final liquidation of any business;

5. Where merchandise is sold for charitable purposes or to relief agencies;

6. Where merchandise is sold on contract to departments of the government or governmental institutions;

7. Where merchandise is sold by any officer acting under the order or direction of any court;

8. Where merchandise is sold at any bona fide auction sale; and

9. Where a particular item of merchandise corresponding to a unique identifier is sold at below cost for fifteen (15) or fewer sequential days and where such single-day or multi-day sale does not occur more than ten (10) separate times in any twelve-month period. This exemption shall not apply to:

a. gasoline and diesel fuel,
b. legend drug products,
c. food and nonalcoholic beverages sold for off-premise use or consumption,
d. household soaps and detergents,
e. health and beauty aids,
f. over-the-counter medicines, vitamins, and health products, excluding exercise equipment and durable medical products,
g. pet food and pet supplies,
h. paper and plastic goods,
i. household cleaning agents and cleaning supplies,
j. baby supplies directly related to nutrition and food preservation, consumption and disposal, including disposable diapers,
k. low-point beer, as defined in paragraph 1 of Section 163.2 of Title 37 of the Oklahoma Statutes, sold for off-premise use or consumption, and
l. structural building materials, including but not limited to lumber and lumber composites, engineered wood products, structural wood panels, roofing, guttering, siding, drywall, insulation, flooring, windows, doors and plumbing elements.

Added by Laws 1949, p. 105, § 6, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 6, eff. Nov. 1, 2013.

§15-598.7. Meeting competitor's prices.

Any retailer or wholesaler may advertise, offer to sell, or sell merchandise at a price made in good faith to meet the price of a competitor who is selling the same article or products of comparable quality at cost to such wholesaler or retailer. The price of merchandise advertised, offered for sale or sold under the exemptions specified in Section 598.6 of this title, shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of the first sentence of this section.

Added by Laws 1949, p. 106, § 7, emerg. eff. May 18, 1949. Amended by Laws 2013, c. 331, § 7, eff. Nov. 1, 2013.

§15-598.8. Determination of cost in case of sale outside ordinary channels of trade.

In establishing the cost of merchandise to the retailer or wholesaler, the invoice cost of such merchandise purchased at a forced, bankrupt, closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the merchandise to the retailer or wholesaler, within thirty (30) days prior to the date of sale, in the quantity last purchased through the ordinary channels of trade.

Laws 1949, p. 106, § 8.

§15-598.9. Witnesses - Production of books, records, etc.

Any defendant, or any witness, in any civil action brought under the provisions of this act may be required to testify, and any defendant, or any witness, may, upon proper process, be compelled to produce his books, records, invoices and all other documents of any such defendant or witness into court and the same may be introduced as evidence, but no defendant, or any witness in such civil action shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may thus be required to testify or produce evidence, documentary or otherwise, and no testimony thus given or produced shall be received against him upon any criminal proceeding or investigation.

Laws 1949, p. 106, § 9.

§15-598.10. Trade association may sue.

Any duly organized and existing trade association, whether incorporated or not, is hereby authorized to institute and prosecute a suit or suits for injunctive relief and costs, provided for under the terms of this act, as the real party in interest for and on behalf of one or more of said association's members, when violation

of this act directly or indirectly affects or threatens to affect or injure such member or members, or where violation of this act threatens to impair fair competition or otherwise affects such member as herein provided.
Laws 1949, p. 106, Sec. 10.

§15-598.11. Partial invalidity.
If any subsection, sentence, clause, word, phrase or provision of this act shall for any reason be held invalid or unconstitutional, the validity of the remaining parts hereof shall not be affected thereby and to that end the provisions of this act are declared to be severable.
Laws 1949, p. 106, § 12.

§15-599.1. Renumbered as Title 68, § 326 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.2. Renumbered as Title 68, § 327 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.3. Renumbered as Title 68, § 328 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.4. Renumbered as Title 68, § 329 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.5. Renumbered as Title 68, § 330 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.6. Renumbered as Title 68, § 331 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.7. Renumbered as Title 68, § 332 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.8. Renumbered as Title 68, § 333 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.9. Renumbered as Title 68, § 334 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.10. Renumbered as Title 68, § 335 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.11. Renumbered as Title 68, § 336 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.12. Renumbered as Title 68, § 337 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.13. Renumbered as Title 68, § 338 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.14. Renumbered as Title 68, § 339 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.15. Repealed by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.16. Renumbered as Title 68, § 340 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.17. Renumbered as Title 68, § 341 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-599.18. Renumbered as Title 68, § 342 by Laws 1981, c. 211, § 7, emerg. eff. June 1, 1981.

§15-611. Repealed by Laws 2015, c. 221, § 1, eff. Nov. 1, 2015.

§15-612. Repealed by Laws 2015, c. 221, § 1, eff. Nov. 1, 2015.

§15-613. Repealed by Laws 2015, c. 221, § 1, eff. Nov. 1, 2015.

§15-614. Repealed by Laws 2015, c. 221, § 1, eff. Nov. 1, 2015.

§15-615. Repealed by Laws 2015, c. 221, § 1, eff. Nov. 1, 2015.

§15-621. Renumbered as § 221 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-622. Renumbered as § 222 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-623. Renumbered as § 223 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-624. Renumbered as § 224 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-625. Renumbered as § 225 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-626. Renumbered as § 226 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-627. Renumbered as § 227 of Title 61 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§15-651. Citation of Act.

This act shall be known and cited as "The Industrial Selling Act."

Laws 1957, p. 86, § 1.

§15-652. Definitions.

The following words, terms and phrases shall, except where the context clearly indicates a different meaning have, when used in this act, the following meanings:

(a) "Person" - Any individual, firm, partnership, corporation, or other organization;

(b) "Employer" - Any person for whom, under whose direction, or in whose interest others perform labor or service;

(c) "Sale or sell" - Any sale, contract of sale, offer of sale, or advertisement thereof;

(d) "Wholesale sale" - A wholesale sale is a sale for the purpose of resale in the ordinary course of business;

(e) "Retail sale" - Any sale other than a wholesale sale as herein defined;

(f) "Wholesaler" - A person, a substantial portion of whose sales are made to retailers for the purpose of resale to consumers;

(g) "Wholesale price" - The price normally paid by a retailer to a wholesaler for the purpose of resale to consumers at a profit.

Laws 1957, p. 86, § 2.

§15-653. Purchase or sale other than in regular course of trade or business - Sales to employees.

No person in this state shall, by any method or procedure, directly or indirectly, by itself or through any subsidiary agency owned or controlled in whole or in part by such person, purchase, or exhibit catalogs for the purchase of, any articles, material, product or merchandise of whatever nature in the name of or on the credit of such person, or at special discounts available to such person, for any other purpose than for use or resale in the regular course of business of such person, or sell, cause to be sold, procure for sale or have in its possession or under its control for sale to its employees any article, material, product or merchandise of whatever nature not of its own production or not handled in its regular course of trade or business; provided that nothing in this act is intended or shall be construed as prohibiting the giving of any such article, material, product or merchandise as an incentive, award or gift;

provided further, that this section shall not apply to purchases by a person for the purpose of resale or gratuity to its employees of tools, products and paraphernalia which are consumed, used or worn by employees in the performance of such employees' regular duties in such trade or business and are beneficial to the health, safety and working conditions of such employees.

No person shall permit the use of its name, credit, facilities, or the services of its employees, nor shall such person in any way promote or sponsor the sale, offer of sale, or assistance in negotiating or completing a sale to its employees through such person at wholesale prices of any such merchandise not manufactured, produced or customarily dealt in or handled by such person in the regular course of its business; provided that nothing in this act is intended or shall be construed as prohibiting any person qualified under the laws of Oklahoma as a public service corporation from promoting or sponsoring through established advertising media the use and sale or equipment utilizing the product or service supplied to the public by such person, or assisting established retail dealers in the promotion of the sale and use of such equipment. Provided however that nothing contained herein shall affect those relationships existing between the producer of crops or livestock and the person or persons supplying said producer with the means of producing same.

No person engaged in the sale of merchandise shall misrepresent the true nature of such business in any form of advertising by the use of the words manufacturer, wholesaler, or retailer, or otherwise, either in sales in its regular course of business or sales to its employees.

Nothing in this act shall ever abridge or impair the right of any person to freely contract with any other person concerning any matter not prohibited hereby or by any other civil or criminal laws of this state; and further, nothing in this act shall prohibit any person from enjoying the rights guaranteed by Section 2 of Article II of the Constitution; nor shall any person by this act be denied the right to freely speak and write upon all subjects as guaranteed by Section 22, Article II of the Constitution.
Laws 1957, p. 86, § 3.

§15-654. Advertising selling at wholesale prices.

No person shall in any form of advertising represent himself as selling at wholesale prices unless he is actually selling at wholesale prices.
Laws 1957, p. 87, § 4.

§15-655. Violations of act.

any person willfully and knowingly violating any of the provisions of this law shall be guilty of a misdemeanor.
Laws 1957, p. 87, § 6.

§15-656. Injunction - Costs - Damages.

(a) Any person injured by any violation, or who shall suffer injury from any threatened violation of this act, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this act shall be established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation, and, in addition thereto the court shall assess in favor of the plaintiff and against the defendant the costs of suit. In such action, if actual damages to the plaintiff are alleged and proved, the plaintiff in said action, in addition to such injunctive relief and costs of suit shall be entitled to recover from the defendant the actual damages sustained by him.

(b) In the event that no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages and costs of suit in any court of general jurisdiction.

Laws 1957 P. 87, Sec. 6.

§15-657. Application of act.

The provisions of this act shall not apply to farm cooperatives, public schools, all recognized religious nonprofit organizations and all veterans organizations.

Laws 1957, p. 87, § 7.

§15-675. Short title.

Sections 1 through 5 of this act shall be known and may be cited as the "Sales Representatives Recognition Act".

Added by Laws 1989, c. 268, § 1, eff. Nov. 1, 1989.

§15-676. Definitions.

As used in the Sales Representatives Recognition Act:

1. "Commission" means compensation accruing to a person for payment by another person, the rate of which is expressed as a percentage of the dollar amount of orders, sales or profits;

2. "Principal" means any person who does not have a permanent or fixed place of business in this state and who does all of the following:

a. Engages in the business of manufacturing, producing, importing or distributing one or more products for sale to customers who purchase products for resale,

b. Utilizes one or more sales representatives to solicit wholesale orders for those products, and

c. Compensates the sales representatives in whole or in part by commission; and

3. "Sales representative" means a person who contracts with a principal to solicit wholesale orders for a product within this state and who is compensated, in whole or in part, by commission. "Sales representative" does not include a person who places orders for or purchases the product for his own account for resale, a person who is an employee of a principal, or a person who sells the product to the ultimate consumer.
Added by Laws 1989, c. 268, § 2, eff. Nov. 1, 1989.

§15-677. Commission - Time when due.
For purposes of the Sales Representatives Recognition Act, the time at which a commission is due to a sales representative shall be determined in the following manner:
1. If the contract between the principal and the sales representative is in writing and its terms unambiguously and clearly specify when the commission is due, the terms of the contract shall control the determination;
2. If the contract between the principal and the sales representative is not in writing, or if the contract between them is in writing but its terms do not specify when the commission is due or its terms are ambiguous or unclear, the past practice used by the principal and the sales representative shall control the determination; or
3. If neither paragraph 1 or 2 of this section can be used to clearly ascertain when a commission is due, the custom and usage prevalent in this state for the industry of the principal and sales representative shall control the determination.
Added by Laws 1989, c. 268, § 3, eff. Nov. 1, 1989.

§15-678. Termination of contract - Payment of commission - Attorney's fees and court costs.
A. If a contract between a principal and a sales representative for the solicitation of wholesale orders is terminated, the principal shall pay the sales representative all commissions due him at the time of the termination within fourteen (14) calendar days of the termination, and shall pay the sales representative all commissions that become due after termination within fourteen (14) calendar days of the date on which the commissions become due.
B. The prevailing party in an action brought under this section is entitled to reasonable attorney's fees and court costs.
Added by Laws 1989, c. 268, § 4, eff. Nov. 1, 1989.

§15-679. Principal - Personal jurisdiction - Waiver of provisions of Act - Availability of rights and remedies - Contracts affected.
A. For purposes of the Sales Representatives Recognition Act, a person who enters into an agreement, as a principal, with a sales representative for the solicitation of orders in this state is

transacting business in this state and therefore authorizes the exercise of personal jurisdiction over said principal by the court.

B. Any provision in any contract between a sales representative and principal purporting to waive any of the provisions of the Sales Representatives Recognition Act is void.

C. Nothing in the Sales Representatives Recognition Act invalidates or restricts any other or additional right or remedy available to a sales representative, or precludes a sales representative from seeking to recover in one action on all claims against a principal.

D. The provisions of the Sales Representatives Recognition Act shall have no effect on any contract or agreement entered into prior to November 1, 1989.

Added by Laws 1989, c. 268, § 5, eff. Nov. 1, 1989.

§15-680. Short title.

This act shall be known and may be cited as the "Invention Development Services Act".

Added by Laws 1991, c. 170, § 1, eff. Sept. 1, 1991.

§15-681. Definitions.

As used in the Invention Development Services Act:

1. "Contract for invention development services" includes a contract by which an invention developer undertakes to develop or promote an invention for a customer;

2. "Customer" means any natural person who is solicited by, inquires about, seeks the services of or enters into a contract with an invention developer for invention development services;

3. "Invention" includes a process, design, asexually reproduced plant, machine, manufacture, composition of matter, improvement upon the foregoing, or a concept;

4. "Invention developer" means any person, firm, corporation or association and the agents, employees or representatives of the person, firm, corporation or association which develops or promotes or offers to develop or promote an invention of a customer in order that the invention of the customer may be patented, licensed or sold for manufacture or manufactured in large quantities. The term "invention developer" does not include:

a. a partnership or corporation when all of its partners, stockholders or members are licensed by a state or the United States to render legal advice concerning patents and trademarks, or a person so licensed,

b. a department or agency of the federal, state or local government, including the inventor's assistance program established by the Oklahoma Department of Commerce,

c. a charitable, scientific, education, religious or other organization registered pursuant to state law,

d. a person, firm, corporation, association or other entity that does not charge a fee for invention development services, or

e. any person, firm, corporation, association or other entity whose gross receipts from contracts for invention development services do not exceed ten percent (10%) of its gross receipts from all sources during the fiscal year preceding the year in which any contract for invention development services is signed.

For the purposes of this paragraph, "fee" shall include any payment made by the customer to the entity, including reimbursements for expenditures made or costs incurred by such entity, but shall not include a payment made from a portion of the income received by a customer by virtue of invention development services performed by the entity;

5. "Invention development services" includes any act required or promised to be performed, or actually performed by an invention developer for a customer.

Added by Laws 1991, c. 170, § 2, eff. Sept. 1, 1991.

§15-682. Contract to be in writing - Copy to customer - Written statement to customer and summary of terms.

A. Every contract for invention development services shall be in writing and shall be subject to the provisions of the Invention Development Services Act. A copy of each fully executed, written contract shall be given to the customer at the time the customer signs the contract.

B. If one or more contracts are contemplated by the invention developer in connection with an invention or if the invention developer contemplates performance of services in connection with an invention in more than one phase with the performance of each phase covered in one or more contracts, the invention developer shall so state in a written statement and shall supply to the customer the written statement together with a copy of each contract or a written summary of the general terms of each contract, including the total cost or consideration required from the customer, before the customer signs the first contract.

Added by Laws 1991, c. 170, § 3, eff. Sept. 1, 1991.

§15-683. Cancellation of contract.

A. The customer shall have the unconditional right to cancel a contract for invention development services for any reason at any time before midnight of the third business day following the date the invention developer and the customer sign the contract and the customer receives a fully executed copy of it. Written notice of cancellation may be delivered personally or by certified mail. If given by certified mail, the notice is effective upon the date

certified by signature. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the customer not to be bound by the contract. Within ten (10) business days after receipt of the notice of cancellation, the invention developer shall deliver to the customer, personally or by certified mail, all moneys paid, any note or other evidence of indebtedness and all materials provided by the customer.

B. Every contract for invention development services shall contain the following statement in 10-point boldface type immediately above the place where the customer signs the contract:

"The three business day period during which you may cancel this contract for any reason by certified mailing or delivering written notice to the invention developer will expire on (last date to mail or deliver notice). If you choose to use certified mail as your notice, it must be placed in the United States mail addressed to (Name of Invention Developer), at (Address of Invention Developer's Place of Business) with first class postage prepaid before midnight of this date. If you choose to personally deliver your notice to the invention developer, it must be delivered to him by the end of his normal business day on this date."

Added by Laws 1991, c. 170, § 4, eff. Sept. 1, 1991.

§15-684. Form and requisites of contract.

A contract for invention development services shall be in the following form:

1. A contract for invention development services shall set forth the information required in this section in at least 10-point type;

2. The following disclosure statement shall be in boldface type and shall be located conspicuously on a cover sheet that contains no other writing:

"The following disclosures are required by law and are expressly made a part of this contract: You have the right to cancel this contract for any reason at any time within three (3) business days from the date you and the invention developer sign the contract and you receive a fully executed copy of it. To exercise this option you may use certified mail or personally deliver to this invention developer written notice of your cancellation. The method and time for notification is set forth in this contract immediately above the place for your signature. Upon cancellation, the invention developer must return by certified mail or personal delivery, within ten (10) business days after receipt of the cancellation notice, all money paid and all materials provided either by you or by another party in your behalf.

Unless the invention developer is a registered patent attorney or registered patent agent, he is not permitted to give you legal advice concerning patent, copyright or trademark law or to advise you of

whether your idea or invention may be patentable or may be protected under the patent, copyright or trademark laws of the United States or any other law.

No patent, copyright or trademark protection will be acquired for you by the invention developer or by this contract. Your failure to inquire into the law governing patent, copyright or trademark matters may jeopardize your rights in your idea or invention both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks or registered copyrights may place you in jeopardy of infringing the copyrights, patent or trademark rights of other persons if you proceed to make, use, distribute or sell your idea or invention.";

3. The contract shall describe fully and in detail the acts or services that the invention developer contracts to perform for the customer;

4. The contract shall state whether the invention developer contracts to construct one or more prototypes, models or devices embodying the invention of the customer, the number of such prototypes to be constructed and whether the invention developer contracts to sell or distribute such prototypes, models or devices;

5. If an oral or written estimate of customer earning is made, the contract shall state the estimate and the data upon which it is based;

6. In a single statement the contract shall set forth both:

a. the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the last thirty (30) days, and

b. the number of customers who have received, by virtue of the invention developer's performance of invention development services, an amount of money in excess of the amount of money paid by such customers to the invention developer pursuant to a contract for invention development services;

7. The contract shall state the expected date of completion of the invention development services;

8. The contract shall state whether and the extent to which it effectuates or makes possible the purchase by the invention developer of an interest in the title to the invention of the customer;

9. The contract shall explain that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period not less than three (3) years after expiration of the term of the contract for invention development services;

10. The contract shall state that the records and correspondence required to be maintained pursuant to Section 9 of this act shall be made available to the customer or his representative for review and

copying at the expense of the customer on the premises of the invention developer during normal business hours upon seven (7) days' written notice, the time period to begin from the date the notice is sent by certified mail;

11. The contract shall state the name of the person or firm contracting to perform the invention development services, all names under which said person or firm is doing or has done business as an invention developer during the previous ten (10) years, the names of all parent and subsidiary companies to the firm and the names of all companies that have a contractual obligation to the firm to perform invention development services; and

12. The contract shall state the principal business address of the invention developer and the name and address of its agent in this state authorized to receive service of process in this state.

Added by Laws 1991, c. 170, § 5, eff. Sept. 1, 1991.

§15-685. Disclosure of certain information to customer - Time period.

In either the first written communication from the invention developer to a specific customer or at the first personal meeting between the invention developer and a customer, the invention developer shall make a written disclosure to the customer of the information required in this section.

The disclosure shall:

1. state the median fee charged to all of the customers of the invention developer who have signed contracts with the invention developer in the preceding six (6) months, excluding customers who have signed in the preceding thirty (30) days;

2. include a single statement setting forth:

   a. the total number of customers who have contracted with the invention developer, except that the number need not reflect those customers who have contracted within the preceding thirty (30) days, and

   b. the number of customers who have received by virtue of the invention developer's performance of invention development services an amount of money in excess of the amount of money paid by those customers to the invention developer pursuant to a contract for invention development services; and

3. contain the following statement:

"Unless the invention developer is an attorney, he is not permitted to give you legal advice concerning patent, copyright or trademark law or to advise you of whether your idea or invention may be patentable or may be protected under the patent, copyright or trademark laws of the United States or any other law.

No patent, copyright or trademark protection will be acquired for you by the invention developer. Your failure to inquire into the law

governing patent, copyright or trademark matters may jeopardize your rights in your idea or invention, both in the United States and in foreign countries. Your failure to identify and investigate existing patents, trademarks or registered copyrights may place you in jeopardy of infringing the copyrights, patent or trademark rights of other persons if you proceed to make, use, distribute or sell your idea or invention."
Added by Laws 1991, c. 170, § 6, eff. Sept. 1, 1991.

§15-686. Financial requirements of invention developer.

A. Every invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety admitted to do business in this state, and equal to either ten percent (10%) of the invention developer's gross income from the invention development business in this state during the invention developer's preceding fiscal year, or Twenty-five Thousand Dollars ($25,000.00), whichever is larger. A copy of the bond shall be approved by the Attorney General and filed with the Secretary of State before the invention developer renders or offers to render invention development services in this state. The invention developer shall have ninety (90) days after the end of each fiscal year within which to change the bond as may be necessary to conform to the requirements of this subsection.

B. The bond required by subsection A of this section shall be in favor of the State of Oklahoma for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud or dishonesty of the invention developer in performance of the contract, by the insolvency or the cessation of business by the invention developer or by the intentional violation of the Invention Development Services Act by the invention developer. Any person claiming against the bond may maintain an action at law against the invention developer and the surety company.

The aggregate liability of the surety company to all persons for all breaches of conditions of the bond shall not exceed the amount of the bond.

C. In lieu of the bond required by subsection A of this section, the invention developer may deposit with the State Treasurer a cash deposit in the like amount. The State Treasurer shall not refund a deposit until sixty (60) days after either the invention developer has ceased doing business in the state or a bond has been filed which complies with subsections A and B of this section.
Added by Laws 1991, c. 170, § 7, eff. Sept. 1, 1991.

§15-687. Restrictions on use of negotiable instruments.

In connection with a contract for invention development services, the invention developer shall not take from a customer a negotiable

instrument other than a check as evidence of the obligation of the customer. A holder is not a holder in due course if he takes a negotiable instrument taken from a customer in violation of this section.
Added by Laws 1991, c. 170, § 8, eff. Sept. 1, 1991.

§15-688. Maintenance of records and correspondence.
Every invention developer shall maintain all records and correspondence relating to performance of each invention development contract for a period of not less than three (3) years after expiration of the term of the contract.
Added by Laws 1991, c. 170, § 9, eff. Sept. 1, 1991.

§15-689. Act not exclusive - Noncompliance - Violations - Remedies - Application of act.
A. The provisions of the Invention Development Services Act are not exclusive and do not relieve the parties or the contract from compliance with all other applicable provisions of law.
B. Any contract for invention development services that does not comply with the applicable provisions of the Invention Development Services Act shall be unenforceable against the customer as contrary to public policy, provided that no contract shall be unenforceable if the invention developer proves that noncompliance was unintentional and resulted from a bona fide error in spite of the invention developer's use of reasonable procedures adopted to avoid any such errors, and if the invention developer makes an appropriate correction.
C. Any contract for invention development services entered into by a customer with an invention developer who has used any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in respect to that customer with the intent that the customer rely thereon, whether or not the customer was in fact misled, deceived or damaged, shall be unenforceable against the customer. Any waiver by the customer of the provisions of the Invention Development Services Act shall be deemed contrary to public policy and shall be void and unenforceable.
D. Any person who has been injured by a violation of the Invention Development Services Act by an invention developer, by any false or fraudulent statement, representation or omission of material fact by an invention developer or by failure of an invention developer to make all of the disclosures required by the Invention Development Services Act may bring a civil action against the invention developer for the damages sustained together with costs and disbursements, including reasonable attorneys fees. The court in its discretion may increase the award of damages to an amount not to exceed three times the damages sustained or Two Thousand Five Hundred Dollars ($2,500.00), whichever is greater.

E. Failure to make the disclosures required by Section 6 of this act shall render any contract subsequently entered into between the customer and the invention developer voidable by the customer.

F. The provision of the Invention Development Services Act shall have no effect on any contract or agreement entered into prior to September 1, 1991.

Added by Laws 1991, c. 170, § 10, eff. Sept. 1, 1991.

§15-691. Definitions.

As used in Sections 1 through 4 of this act:

1. "Customer" means any individual or entity who causes or caused a molder to fabricate, cast, or otherwise make a die, mold, form, or pattern or who provides a molder with a die, mold, form, or pattern to manufacture, assemble, cast, fabricate, or otherwise make a product or products for a customer;

2. "Molder" means any individual or entity who fabricates, casts, or otherwise makes or uses a die, mold, form, or pattern for the purpose of manufacturing, assembling, casting, fabricating, or otherwise making a product or products for a customer. A "molder" includes, but is not limited to, a tool or die maker; and

3. "Within three (3) years following the last prior use" shall be construed to include any period following the last prior use of a die, mold, form, or pattern regardless of whether or not that period precedes July 1, 1998.

Added by Laws 1998, c. 223, § 1, eff. July 1, 1998.

§15-692. Customer's right and title to any die, mold, form or pattern - Claim of possession - Transfer of title to molder - Notice to customer.

A. In the absence of any agreement to the contrary, the customer shall have all rights and title to any die, mold, form, or pattern in the possession of the molder.

B. If a customer does not claim possession from a molder of a die, mold, form, or pattern within three (3) years following the last prior use thereof, all rights and title to any die, mold, form, or pattern shall be transferred by operation of law to the molder for the purpose of destroying or otherwise disposing of such die, mold, form, or pattern, consistent with this section.

C. If a molder chooses to have all rights and title to any die, mold, form, or pattern transferred to the molder by operation of law, the molder shall send written notice by registered mail, return receipt requested, to the chief executive office of the customer or, if the customer is not a business entity, to the customer at the customer's last-known address indicating that the molder intends to terminate the customer's rights and title by having all such rights and title transferred to the molder by operation of law pursuant to

this section. Such notice shall include a statement of the customer's rights as set forth in subsection D of this section.

D. 1. If a customer does not respond in person or by mail to claim possession of the particular die, mold, form, or pattern within one hundred twenty (120) days following the date the notice was sent, or does not make other contractual arrangements with the molder for storage of the die, mold, form, or pattern, all rights and title of the customer, except patents and copyrights, shall transfer by operation of law to the molder. Thereafter, the molder may destroy or otherwise dispose of the particular die, mold, form, or pattern as the molder's own property without any risk of liability to the customer.

2. This subsection shall not be construed in any manner to affect any right of the customer under federal patent or copyright law or federal law pertaining to unfair competition.

Added by Laws 1998, c. 223, § 2, eff. July 1, 1998.

§15-693. Molder's lien.

A. Molders shall have a lien, dependent on possession, on all dies, molds, forms, or patterns in their hands belonging to a customer, for the balance due them from such customer for any manufacturing or fabrication work, and in the value of all material related to such work. The customer may at any time discharge the lien by depositing with the county clerk in whose office the lien claim has been filed an amount of money or bond equal to one hundred twenty-five percent (125%) of the lien claim amount, in accordance with the same procedures as specified in Section 147.1 of Title 42 of the Oklahoma Statutes. The molder may retain possession of the die, mold, form, or pattern until the charges are paid or the lien or bond is released.

B. Before enforcing such lien, notice in writing shall be given to the customer, whether delivered personally or sent by registered mail, return receipt requested, to the last-known address of the customer. This notice shall state that a lien is claimed for the damages set forth in or attached to such writing for manufacturing or fabrication work contracted or performed for the customer. This notice shall also include a demand for payment.

C. If the molder has not been paid the amount due within sixty (60) days after the notice has been received by the customer as provided in subsection B of this section, the molder may sell the die, mold, form, or pattern at a public or private auction.

Added by Laws 1998, c. 223, § 3, eff. July 1, 1998.

§15-694. Sale of die, mold, form or pattern - Notice to customer.

A. Before a molder may sell the die, mold, form, or pattern, the molder shall notify the customer by registered mail, return receipt requested. The notice shall include the following information:

1. The molder's intention to sell the die, mold, form, or pattern thirty (30) days after the customer's receipt of the notice;

2. A description of the die, mold, form, or pattern to be sold;

3. The time and place of the sale; and

4. An itemized statement for the amount due.

B. If there is not a return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the molder shall publish notice of the molder's intention to sell the die, mold, form, or pattern in a newspaper of general circulation in the county of the customer's last-known place of business. The notice shall include a description of the die, mold, form, or pattern.

C. If the sale is for a sum greater than the amount of the lien, the excess shall be paid to any prior lienholder known to the molder at the time of the sale and any remainder to the customer, if the customer's address is known, or to the State Treasurer for deposit in the General Revenue Fund if the customer's address is unknown to the molder at the time of the sale.

D. A sale shall not be made under this subsection if it would be in violation of any right of a customer under federal patent or copyright law.

Added by Laws 1998, c. 223, § 4, eff. July 1, 1998.

§15-721. Unsolicited goods - Receipt deemed unconditional gift - Injunctive relief.

No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale in this state, goods, wares, or merchandise, where the offer includes the voluntary and unsolicited sending of such goods, wares, or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such goods, wares, or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of such goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the sender. Provided, however, that where solicited goods, wares or merchandise are delivered to the wrong person by accident or by the mistake of the delivery or mail service, such delivery shall not constitute an offer subject to this act, and provided that the provisions of this act shall not apply to goods of equal or greater value and at no additional cost, substituted for goods ordered or solicited by the recipient.

If after any such receipt deemed to be an unconditional gift under this section, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorneys' fees and costs to the prevailing party.

Laws 1970, c. 128, § 1, emerg. eff. April 6, 1970.

§15-722. Unsolicited goods sent by organization to member after termination of membership.

If a person is a member of an organization which makes retail sales of any goods, wares, or merchandise to its members, and the person notifies the organization of his termination of membership by certified mail, return receipt requested, any unordered goods, wares, or merchandise which are sent to the person after forty-five (45) days following execution of the return receipt for the certified letter by the organization shall for all purposes be deemed unconditional gifts to the person, who may use or dispose of the goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the organization.

If the termination of a person's membership in such organization breaches any agreement with the organization, nothing in this section shall relieve the person from liability for damages to which he might be otherwise subjected pursuant to law, but he shall not be subject to any damages with respect to any goods, wares, or merchandise which are deemed unconditional gifts to him under this section.

If after any receipt deemed to be an unconditional gift under this section, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorneys' fees and costs to the prevailing party.

Laws 1970, c. 128, § 2, emerg. eff. April 6, 1970.

§15-751. Short title.

This act may be cited as the Oklahoma Consumer Protection Act.

Laws 1972, c. 227, § 1, operative Sept. 1, 1972.

§15-752. Definitions.

As used in the Oklahoma Consumer Protection Act:

1. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity;

2. "Consumer transaction" means the advertising, offering for sale or purchase, sale, purchase, or distribution of any services or any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value wherever located, for purposes that are personal, household, or business oriented;

3. "Credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on

credit. All credit cards lawfully issued shall be considered the property of the cardholders or the issuer for all purposes;

4. "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility;

5. "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever located;

6. "Examination" when used in reference to documentary material includes the inspection, study, or copying of any such material, and the taking of testimony under oath, or acknowledgment in respect to any such documentary material or copy thereof;

7. "Merchandise" includes any object, ware, good, commodity, intangible, real estate, or service;

8. "Closing out sale" means any offer to sell, or actual sale, to the public of goods, wares, or merchandise on the implied or direct representation that the sale is in anticipation of the termination of a business at its present location, or that the sale is being held other than in the ordinary course of business. It also shall mean but shall not be limited to any sale held or advertised as a "closing out sale", "going out of business sale", "discontinuance of business sale", "quitting business sale", "sell out", "liquidation", "loss of lease sale", "must vacate sale", "forced out of business sale", "fire sale", "smoke and water damage sale", "adjustment sale", "creditor's sale", "bankrupt sale", "insolvent sale", "mortgage sale", or other like or similar title;

9. "Advertisement" means any advertisement or announcement published in the news media including but not limited to the radio, television, newspapers, handbills, and mailers;

10. "License" means the written authorization issued by the court clerk of the district court in any county in this state to any person to conduct a closing out sale;

11. "Clerk" means the court clerk of the district court of any county of this state in which a person applying for a license intends to conduct a closing out sale;

12. "Automatic dial announcing device" means automatic equipment that:

a. stores telephone numbers to be called, or has a random or sequential number generator capable of producing numbers to be called,

b. conveys a prerecorded or synthesized voice message to the number called, and

c. is used for the purpose of offering any goods or services for sale or conveying information regarding such goods or services;

13. "Deceptive trade practice" means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral;

14. "Unfair trade practice" means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

15. "Cemetery" means any land or structure in this state dedicated to or used, or intended to be used, for the interment of human remains;

16. "Deceptive use of another's name in notification or solicitation" occurs when a business, or a person acting on its behalf, engages in the following activity:

a. through advertisement, solicitation or other notification, either verbally or through any other means, informs a consumer of the availability of any type of goods or services that are not free,

b. the name of an unrelated and unaffiliated person is mentioned in any manner,

c. the goods or services mentioned are not actually provided by the unrelated and unaffiliated person whose name is mentioned,

d. the business on whose behalf the notification or solicitation is made does not have a consensual right to mention the name of the unrelated and unaffiliated person, and

e. neither the actual name nor trade name of the business on whose behalf the notification or solicitation is being made is stated, nor the actual name or trade name of any actual provider of the goods or services is stated, so as to clearly identify for the consumer a name that is distinguishable and separate from the name of the unrelated and unaffiliated person whose name is mentioned in any manner in the notification or solicitation, and thereby a misleading implication or ambiguity is created, such that a consumer who is the recipient of the advertisement, solicitation or notification may reasonably but erroneously believe:

(1) that the goods or services whose availability is mentioned are made available by or through the unrelated and unaffiliated person whose name is mentioned, or

(2) that the unrelated and unaffiliated person whose name is mentioned is the one communicating with the consumer; and

17. "Consumer laws" means the Oklahoma Consumer Protection Act as well as the following: Section 1451 (Embezzlement), Section 1502 (Deceptive Advertising), Sections 1533.1 and 1533.2 (False personation), Sections 1541.1 and 1541.2 (Obtaining or attempting to obtain property by trick or deception), Section 1550.2 (Use of credit and debit cards without consent), Sections 1550.21 through 1550.43 (Oklahoma Credit Card Crime Act of 1970 and false identification) and Sections 1951 through 1981 (Oklahoma Computer Crimes Act and unlawful reproduction of recordings) of Title 21 of the Oklahoma Statutes.
Added by Laws 1972, c. 227, § 2, operative Sept. 1, 1972. Amended by Laws 1979, c. 145, § 1, eff. Oct. 1, 1979; Laws 1980, c. 192, § 1, eff. Oct. 1, 1980; Laws 1983, c. 103, § 1, eff. Nov. 1, 1983; Laws 1991, c. 312, § 1, eff. July 1, 1991; Laws 1992, c. 317, § 1, eff. July 1, 1992; Laws 1994, c. 235, § 1, eff. Sept. 1, 1994; Laws 1996, c. 8, § 2, eff. July 1, 1996; Laws 1999, c. 175, § 2, eff. Nov. 1, 1999; Laws 2002, c. 296, § 1, eff. Nov. 1, 2002; Laws 2003, c. 61, § 1, eff. Nov. 1, 2003; Laws 2011, c. 369, § 8, eff. July 1, 2011.

§15-752A. Credit card receipts - Restrictions on printing certain account information - Operative dates of section.

A. Except as otherwise provided in this section, a person who accepts credit cards or debit cards for a consumer transaction shall not print more than the last five digits of the account number or the expiration date upon any receipt provided to the cardholder.

B. This section applies only to receipts that are printed electronically and does not apply to transactions in which the sole means of recording the credit card or debit card number is by handwriting or by an imprint or copy of the card.

C. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is first put into use on or after January 1, 2004.

D. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for consumer transactions that is in use before January 1, 2004.
Added by Laws 2002, c. 296, § 2, eff. Nov. 1, 2002.

§15-753. Unlawful practices.

A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act when, in the course of the person's business, the person:

1. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular make or brand, when it is of another;

2. Makes a false or misleading representation, knowingly or with reason to know, as to the source, sponsorship, approval, or certification of the subject of a consumer transaction;

3. Makes a false or misleading representation, knowingly or with reason to know, as to affiliation, connection, association with, or certification by another;

4. Makes a false or misleading representation or designation, knowingly or with reason to know, of the geographic origin of the subject of a consumer transaction;

5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith;

6. Represents, knowingly or with reason to know, that the subject of a consumer transaction is original or new if the person knows that it is reconditioned, reclaimed, used, or secondhand;

7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another;

8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;

9. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity;

10. Advertises under the guise of obtaining sales personnel when in fact the purpose is to sell the subject of a consumer transaction to the sales personnel applicants;

11. Makes false or misleading statements of fact, knowingly or with reason to know, concerning the price of the subject of a consumer transaction or the reason for, existence of, or amounts of price reduction;

12. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

a. refusal to show the subject of a consumer transaction advertised,

b. disparagement of the advertised subject of a consumer transaction or the terms of sale,

c. requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction,

d. refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time,

e. showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement,
f. accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item, or
g. willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

13. Conducts a closing out sale without having first obtained a license as required in the Oklahoma Consumer Protection Act;

14. Resumes the business for which the closing out sale was conducted within thirty-six (36) months from the expiration date of the closing out sale license;

15. Falsely states, knowingly or with reason to know, that services, replacements or repairs are needed;

16. Violates any provision of the Oklahoma Health Spa Act;

17. Violates any provision of the Home Repair Fraud Act;

18. Violates any provision of the Consumer Disclosure of Prizes and Gifts Act;

19. Violates any provision of Section 755.1 of this title or Section 1847a of Title 21 of the Oklahoma Statutes;

20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title;

21. Violates any provision of Section 169.1 of Title 8 of the Oklahoma Statutes in fraudulently or intentionally failing or refusing to honor the contract to provide certain cemetery services specified in the contract entered into pursuant to the Perpetual Care Fund Act;

22. Misrepresents a mail solicitation as an invoice or as a billing statement;

23. Offers to purchase a mineral or royalty interest through an offer that resembles an oil and gas lease and that the consumer believed was an oil and gas lease;

24. Refuses to honor gift certificates, warranties, or any other merchandise offered by a person in a consumer transaction executed prior to the closing of the business of the person without providing a purchaser a means of redeeming such merchandise or ensuring the warranties offered will be honored by another person;

25. Knowingly causes a charge to be made by any billing method to a consumer for services which the person knows was not authorized in advance by the consumer;

26. Knowingly causes a charge to be made by any billing method to a consumer for a product or products which the person knows was not authorized in advance by the consumer;

27. Violates Section 752A of this title;

28. Makes deceptive use of another's name in notification or solicitation, as defined in Section 752 of this title;

29. Falsely states or implies that any person, product or service is recommended or endorsed by a named third person;

30. Falsely states that information about the consumer, including but not limited to, the name, address or phone number of the consumer has been provided by a third person, whether that person is named or unnamed;

31. Acting as a debt collector, contacts a debtor and threatens to file a suit against the debtor over a debt barred by the statute of limitations which has passed for filing suit for such debt; or

32. Acting as a debt collector, contacts a debtor and uses obscene or profane language to collect a debt.

Added by Laws 1972, c. 227, § 3, operative Sept. 1, 1972. Amended by Laws 1979, c. 145, § 2, eff. Oct. 1, 1979; Laws 1980, c. 192, § 2, eff. Oct. 1, 1980; Laws 1987, c. 217, § 1, eff. Nov. 1, 1987; Laws 1988, c. 215, § 1, eff. Nov. 1, 1988; Laws 1989, c. 353, § 2, emerg. eff. June 3, 1989; Laws 1991, c. 312, § 2, eff. July 1, 1991; Laws 1992, c. 373, § 5, eff. July 1, 1992; Laws 1993, c. 10, § 2, emerg. eff. March 21, 1993; Laws 1994, c. 235, § 2, eff. Sept. 1, 1994; Laws 1996, c. 8, § 3, eff. July 1, 1996; Laws 1999, c. 175, § 3, eff. Nov. 1, 1999; Laws 2001, c. 260, § 1, eff. Nov. 1, 2001; Laws 2002, c. 296, § 3, eff. Nov. 1, 2002; Laws 2003, c. 61, § 2, eff. Nov. 1, 2003; Laws 2011, c. 369, § 9, eff. July 1, 2011; Laws 2012, c. 258, § 1, emerg. eff. May 15, 2012.

NOTE: Laws 1988, c. 161, § 1 repealed by Laws 1989, c. 353, § 14, emerg. eff. June 3, 1989. Laws 1991, c. 242, § 4 repealed by Laws 1992, c. 373, § 22, eff. July 1, 1992. Laws 1992, c. 317, § 2 repealed by Laws 1993, c. 10, § 16, emerg. eff. March 21, 1993.

§15-754. Exemptions.

Nothing in the Oklahoma Consumer Protection Act shall apply to:

1. Publishers, broadcasters, printers or other persons insofar as an unlawful practice as defined in Section 753 of this title involves information that has been disseminated or reproduced on behalf of others without knowledge that it is an unlawful practice;

2. Actions or transactions regulated under laws administered by the Corporation Commission or any other regulatory body or officer acting under statutory authority of this state or the United States, or to acts done by retailers or other persons acting in good faith on the basis of information or matter supplied by others and without knowledge of the deceptive character of such information or matter; and

3. The collection of monies denominated as gross receipts tax on mixed beverages, sales tax or use tax, or asserted injuries or damages that are monies that have been collected as, or denominated

as, gross receipts tax on mixed beverages, sales tax or use tax, and which have been remitted to the Oklahoma Tax Commission or other governmental taxing authority.
Added by Laws 1972, c. 227, § 4, operative Sept. 1, 1972. Amended by Laws 2017, c. 382, § 1, eff. Nov. 1, 2017.

§15-755.1. Automatic dial announcing devices - Operation - Conditions.

A. The connection of an automatic dial announcing device to a telephone line is subject to the provisions of the Oklahoma Consumer Protection Act.

B. No person shall operate an automatic dial announcing device except in accordance with the provisions of the Oklahoma Consumer Protection Act. The use of such device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dial announcing devices, is subject to the provisions of the Oklahoma Consumer Protection Act.

C. A person shall not use an automatic dial announcing device except as provided by this section. An automatic dial announcing device shall be used only when:

1. The device disconnects from the called person's line not later than twenty (20) seconds after the called person hangs up; and

2. For calls terminating in this state, the device is not used to make a call:

   a. before 9 a.m. or after 9 p.m., or

   b. at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, 15 U.S.C., Section 1692(c), when the device is used for collection purposes; and

3. One of the following occur:

   a. the calls are made or messages given solely in response to calls initiated by the person to whom the automatic calls or recorded messages are directed or who has made a written request to be called,

   b. the calls made concern goods or services that have been previously ordered or purchased,

   c. the calls are made by creditors or their assignees, or

   d. the calls are initiated by a live operator who gives the caller the option to disconnect prior to the playing of a prerecorded or synthesized voice message.

D. An automatic dial announcing device shall not be used for random number dialing or to dial numbers determined by successively increasing or decreasing integers.

E. A telephone company in this state may, but shall not be required to disconnect or refuse to connect service to a person using or intending to use an automatic dial announcing device if the telephone company determines that the device is not capable of

disconnecting from a called party's line as required by this section or that the device would cause or is causing network harm.

F. The telephone company shall give notice to the person using the device of its intent to disconnect service not less than three (3) days prior to the date of the disconnection, except that if the device is causing network congestion or blockage, the notice may be given the day before the date of disconnection.

G. The telephone company shall disconnect service to the person on a determination by a court or the Oklahoma Corporation Commission that the person is violating the provisions of this section, and may reconnect service to the person only on a determination by the court or the Oklahoma Corporation Commission that the person will comply with this section. Any notice of such an order shall be served on a telephone company in the same manner as is required for service of process, unless the company is already a party to the proceeding in which the order is created.

Added by Laws 1991, c. 312, § 3, eff. July 1, 1991. Amended by Laws 1992, c. 317, § 3, eff. July 1, 1992.

§15-755.2. Contracts - Calls from automatic dial answering devices - Voidability.

A contract or agreement to purchase any consumer goods or services pursuant to an unsolicited telephone call or message, including a cellular telephone call or text message, made by an automatic dial announcing device conveying a prerecorded or synthesized voice message or an automatic dialing device with electronic text message delivery capabilities and without the use of a live operator in violation of the Oklahoma Consumer Protection Act shall be voidable at the option of the consumer, unless it has been memorialized in writing and signed by the consumer.

Added by Laws 1991, c. 312, § 4, eff. July 1, 1991. Amended by Laws 2011, c. 369, § 1, eff. July 1, 2011.

§15-755.3. Message relaying services.

Nothing in this act shall prohibit a telephone company from providing a service that is utilized for relaying messages for private purposes, including but not limited to voice messaging services or message delivery services.

Added by Laws 1991, c. 312, § 5, eff. July 1, 1991.

§15-756.1. Actions by Attorney General or district attorney - Consent judgment - Orders.

A. The Attorney General or a district attorney may bring an action:

1. To obtain a declaratory judgment that an act or practice violates the Consumer Protection Act;

2. To enjoin, or to obtain a restraining order against a person who has violated, is violating, or is likely to violate the Consumer Protection Act;

3. To recover actual damages and, in the case of unconscionable conduct, penalties as provided by this act, on behalf of an aggrieved consumer, in an individual action only, for violation of the Consumer Protection Act; or

4. To recover reasonable expenses and investigation fees.

B. In lieu of instigating or continuing an action or proceeding, the Attorney General or a district attorney may accept a consent judgment with respect to any act or practice declared to be a violation of the Consumer Protection Act. Such a consent judgment shall provide for the discontinuance by the person entering the same of any act or practice declared to be a violation of the Consumer Protection Act, and it may include a stipulation for the payment by such person of reasonable expenses and investigation fees incurred by the Attorney General or a district attorney. The consent judgment also may include a stipulation for restitution to be made by such person to consumers of money, property or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

C. In any action brought by the Attorney General or a district attorney, the court may:

1. Make such orders or judgments as may be necessary to prevent the use or employment by a person of any practice declared to be a violation of the Consumer Protection Act;

2. Make such orders or judgments as may be necessary to compensate any person for damages sustained;

3. Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

4. Appoint a master or receiver or order sequestration of assets to prevent the use or enjoyment of proceeds derived through illegal means and assess the expenses of a master or receiver against the defendant;

5. Revoke any license or certificate authorizing that person to engage in business in this state;

6. Enjoin any person from engaging in business in this state; or

7. Grant other appropriate relief.

D. When an action is filed under the Consumer Protection Act by a district attorney or the Attorney General, no action seeking an injunction or declaratory judgment shall be filed in any other county or district in this state based upon the same transaction or occurrence, series of transactions or occurrences, or allegations which form the basis of the first action filed.
Added by Laws 1980, c. 192, § 3, eff. Oct. 1, 1980. Amended by Laws 1994, c. 235, § 3, eff. Sept. 1, 1994.

§15-757. Investigations.

A. When the Attorney General or a district attorney has reason to believe a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by Section 753 of this title, and he believes it to be in the public interest that an investigation should be made to ascertain whether a person has in fact engaged in, is engaging in or is about to engage in any such practice, he may execute in writing and cause to be served upon any such person who is believed to have information, documentary material or physical evidence relevant to the alleged violation an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the nonprivileged relevant facts and circumstances of which he has knowledge, or to appear and testify, or to produce relevant nonprivileged documentary material or physical evidence for examination at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, offering for sale, sale or distribution of any subject of a consumer transaction or the conduct of any trade or commerce that is the subject matter of the investigation.

B. At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or to set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business, or in the district court of Oklahoma County, Oklahoma. At any time, an extension of the return date or a modification or setting aside of the demand may be made by agreement of the parties.
Amended by Laws 1982, c. 74, § 1, operative Oct. 1, 1982.

§15-758. Subpoenas, hearings, rules and regulations.

To accomplish the objectives and to carry out the duties prescribed by the Oklahoma Consumer Protection Act, the Attorney General or district attorney, in addition to other powers conferred on them by the Oklahoma Consumer Protection Act, or the laws of this state, may issue subpoenas or other process to any person and conduct hearings in aid of any investigation or inquiry, administer oaths and take sworn statements under penalty of perjury, serve and execute in

any county, search warrants, provided that none of the powers conferred by the Oklahoma Consumer Protection Act shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by the Oklahoma Consumer Protection Act shall not be made public or disclosed by the Attorney General, district attorney or their employees.
Added by Laws 1972, c. 227, § 8, operative Sept. 1, 1972. Amended by Laws 1982, c. 74, § 2, operative Oct. 1, 1982; Laws 1999, c. 325, § 1, eff. Nov. 1, 1999.

§15-759. Service of notice, demand or subpoena.
Service of any notice, demand or subpoena under this act shall be made in accordance with the statutes of this state.
Laws 1972, c. 227, § 9, operative Sept. 1, 1972.

§15-760. Enforcement of notice, demand or subpoena powers.
The district court of the county where the person served with any notice, demand or subpoena resides or has his principal place of business or the district court of Oklahoma County, Oklahoma, may enforce compliance with any notice, demand or subpoena under this act by order, the noncompliance with which shall be treated the same as contempt of said court.
Laws 1972, c. 227, § 10, operative Sept. 1, 1972.

§15-761.1. Liability under Consumer Protection Act.
A. The commission of any act or practice declared to be a violation of the Consumer Protection Act shall render the violator liable to the aggrieved consumer for the payment of actual damages sustained by the customer and costs of litigation including reasonable attorney's fees, and the aggrieved consumer shall have a private right of action for damages, including but not limited to, costs and attorney's fees. In any private action for damages for a violation of the Consumer Protection Act the court shall, subsequent to adjudication on the merits and upon motion of the prevailing party, determine whether a claim or defense asserted in the action by a nonprevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars ($10,000.00) for reasonable costs, including attorney's fees, incurred with respect to such claim or defense.
B. The commission of any act or practice declared to be a violation of the Consumer Protection Act, if such act or practice is

also found to be unconscionable, shall render the violator liable to the aggrieved customer for the payment of a civil penalty, recoverable in an individual action only, in a sum set by the court of not more than Two Thousand Dollars ($2,000.00) for each violation. In determining whether an act or practice is unconscionable the following circumstances shall be taken into consideration by the court: (1) whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers; (3) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that there was no reasonable probability of payment of the obligation in full by the consumer; (4) whether the violator knew or had reason to know that the transaction he or she induced the consumer to enter into was excessively one-sided in favor of the violator.

C. Any person who is found to be in violation of the Oklahoma Consumer Protection Act in a civil action or who willfully violates the terms of any injunction or court order issued pursuant to the Consumer Protection Act shall forfeit and pay a civil penalty of not more than Ten Thousand Dollars ($10,000.00) per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the name of the state, or a district attorney may petition for recovery of civil penalties.

D. In administering and pursuing actions under this act, the Attorney General and a district attorney are authorized to sue for and collect reasonable expenses, attorney's fees, and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties and activities under the Consumer Protection Act.

E. In addition to other penalties imposed by the Oklahoma Consumer Protection Act, any person convicted in a criminal proceeding of violating the Oklahoma Consumer Protection Act shall be guilty of a misdemeanor for the first offense and upon conviction thereof shall be subject to a fine not to exceed One Thousand Dollars ($1,000.00), or imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment. If the value of the money, property or valuable thing referred to in this section is Five Hundred Dollars ($500.00) or more or if the conviction is for a

second or subsequent violation of the provisions of the Oklahoma Consumer Protection Act, any person convicted pursuant to this subsection shall be deemed guilty of a felony and shall be subject to imprisonment in the State Penitentiary, for not more than ten (10) years, or a fine not to exceed Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.
Added by Laws 1980, c. 192, § 4, eff. Oct. 1, 1980. Amended by Laws 1988, c. 161, § 2, eff. Nov. 1, 1988; Laws 1994, c. 235, § 4, eff. Sept. 1, 1994; Laws 1997, c. 133, § 134, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 61, eff. July 1, 1999.
NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 134 from July 1, 1998, to July 1, 1999.

§15-762. Additional powers and duties.

A. In addition to all other powers and duties as set forth in this act, the Attorney General may do any or all of the following and upon request receive the assistance of any department, division or branch of state government:

1. Coordinate consumer protection activities within state government and maintain a liaison with federal and local governments concerning the interests of consumers and businessmen;

2. Study the operation of any existing or proposed law affecting the consumer interest and make recommendations to the Governor and Legislature;

3. Conduct studies, investigations and research in matters affecting consumer interest;

4. Submit an annual report of activities to the legislative and executive branches of state government; and

5. Do those things necessary to implement the purpose of this act.

B. The Attorney General shall have the powers of a district attorney to investigate and prosecute suspected violations of consumer laws.
Added by Laws 1972, c. 227, § 12, operative Sept. 1, 1972. Amended by Laws 1999, c. 325, § 2, eff. Nov. 1, 1999.

§15-763. Effect on other remedies.

The remedies in this act are in addition to and not in derogation of remedies otherwise available under state or local law to the Attorney General.
Laws 1972, c. 227, § 13, operative Sept. 1, 1972.

§15-764.1. Definitions - Rescission period.

A. As used in this section:

1. "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories

thereto, but excluding ear molds, batteries and cords. The term "hearing aid" does not include cochlear implants or cochlear prosthesis;

2. "Hearing aid provider" means a hearing aid dealer or fitter licensed pursuant to Section 1-1750 et seq. of Title 63 of the Oklahoma Statutes, audiologist licensed pursuant to Section 1601 et seq. of Title 59 of the Oklahoma Statutes, or any other individual who dispenses hearing aids within this state; and

3. "Rescission period" means thirty (30) calendar days from the day the hearing aid is placed in the possession of the purchaser.

B. A hearing aid provider shall provide a thirty-day rescission period on a hearing aid purchase consistent with the following terms:

1. The purchaser shall have the right to cancel the purchase for any reason if the hearing aid is returned to the hearing aid provider in the same condition as when purchased, ordinary wear and tear excepted, within thirty (30) days of the date of receipt of the hearing aid. The thirty-day rescission period shall be tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery;

2. The purchaser is entitled to receive a full refund of the purchase price, provided the hearing aid provider may be entitled to a cancellation fee no greater than ten percent (10%) of the total purchase price for the hearing aid or One Hundred Fifty Dollars ($150.00) per hearing aid, whichever is less; and

3. The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the following specific statement in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract:

OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID.

BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PERCENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS ($150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER.

IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF $____.00 (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND).

IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO:

OKLAHOMA STATE DEPARTMENT OF HEALTH

OCCUPATIONAL LICENSING DIVISION

1000 N.E. 10TH STREET
OKLAHOMA CITY, OKLAHOMA 73105

C. Failure to comply with this section constitutes a deceptive trade practice. Hearing aid providers who violate this section shall be disciplined by the appropriate state licensing agency, in addition to any sanction provided for in the Oklahoma Consumer Protection Act.
Added by Laws 2001, c. 406, § 5, emerg. eff. June 4, 2001.

§15-765.1. Short title - Construction of violations.

Sections 3 through 5 of this act shall constitute a part of the Oklahoma Consumer Protection Act and shall be known and may be cited as the "Home Repair Fraud Act".

Any violation of the Home Repair Fraud Act shall constitute an unlawful business practice and shall be subject to the provisions of the Oklahoma Consumer Protection Act.
Added by Laws 1988, c. 161, § 3, eff. Nov. 1, 1988.

§15-765.2. Definitions - Application of act.

A. As used in the Home Repair Fraud Act:

1. "Home repair" means the fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence.

Home repair shall include, but not be limited to, the construction, installation, replacement or improvement of driveways, swimming pools, porches, roofs, siding, kitchens, chimneys, chimney liners, garages, outbuildings or storage sheds, fences, fallout shelters, air conditioning systems, heating systems, boilers, furnaces, hot water heaters, electrical wiring, sewers, plumbing fixtures, storm doors, storm windows, awnings, floor or attic bracing, moisture control, and other improvements to residential structures or upon the land adjacent thereto.

Home repair shall not include the sale, installation, cleaning or repair of carpets; the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods or materials; the repair, installation, replacement or connection of any home appliance including but not limited to disposals, refrigerators, ranges, garage door openers, television antennas, washing machines, telephones or other home appliances when the person replacing, installing, repairing or connecting such home appliance is an employee or agent of the merchant that sold the home appliance; or landscaping; and

2. "Residence" means a single or multiple family dwelling, including but not limited to a single family home, apartment building, condominium, duplex or townhouse which is used or intended to be used by its occupants as their dwelling place.

B. Nothing in the Home Repair Fraud Act shall be construed to apply to original construction of single or multiple family residence.
Added by Laws 1988, c. 161, § 4, eff. Nov. 1, 1988. Amended by Laws 1997, c. 16, § 1, eff. Nov. 1, 1997.

§15-765.3. Acts constituting fraud.

A person commits the offense of home repair fraud if the person knowingly or with reason to know:

1. enters into a consumer transaction for home repair and knowingly or with reason to know:

a. misrepresents a material fact relating to the terms of the consumer transaction or the preexisting or existing condition of any portion of the property involved, or creates or confirms an impression of the consumer which is false and which the violator does not believe to be true, or promises performance which the violator does not intend to perform or knows will not be performed; or

b. uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such consumer to enter into any consumer transaction; or

c. requires payment for the home repair at a price which unreasonably exceeds the value of the services and materials needed for the home repair;

2. damages the property of a person with the intent to enter into a consumer transaction for home repair; or

3. misrepresents himself or another to be an employee or agent of any unit of the federal, state, county, or municipal government, or an employee or agent of any public utility, with the intent to cause a person to enter into, with himself or another, any consumer transaction for home repair.
Added by Laws 1988, c. 161, § 5, eff. Nov. 1, 1988.

§15-765.4. Inspection and removal of mold.

Any person or entity that inspects houses for mold shall not also render service for removing the mold; provided that, if the total cost of the inspection and removal does not exceed Two Hundred Dollars ($200.00), the consumer may consent to the inspection and removal by the same person or entity.
Added by Laws 2004, c. 425, § 1, eff. July 1, 2004.

§15-765.5. Short title.

This act shall be known and may be cited as the "Notice of Opportunity to Repair Act".
Added by Laws 2006, c. 111, § 1, eff. Nov. 1, 2006.

§15-765.6. Construction contracts may include notice and offer to repair provisions.

A. For the purposes of this section:

1. "Construction defect" means a deficiency in or a deficiency arising out of the design, specifications, surveying, planning, supervision or observation of construction or construction of residential improvements that results from any of the following:

a. defective material, products or components used in the construction of residential improvements,

b. violation of the applicable codes in effect at the time of construction of residential improvements,

c. failure of the design of residential improvements to meet the applicable professional standards of care at the time of governmental approval of the design of residential improvements, or

d. failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction;

2. "Contractor" means a person or entity providing labor, services or materials in the construction of a new residence or alteration of, repair of, or addition to an existing residence; and

3. "Residence" means any structure designed and used only for residential purposes, together with all attached and unattached structures, constructed by the contractor, regardless of whether the real property upon which the residence is located was purchased from the contractor. Such term also includes a residence upon which alterations or repairs were performed by the contractor at the direction of the homeowner.

B. A contract for the construction of a new residence or for an alteration of, repair of, or addition to an existing residence may include provisions which:

1. Require a homeowner, prior to filing a lawsuit for construction defects, to present to the contractor a written notice of construction defects; and

2. Allow the contractor to inspect any construction defects and present to the homeowner a written response which shall include the contractor's offer to repair defects or compensate homeowner for such defects within thirty (30) days after receipt of the notice of defects.

If such provisions are included in a contract, the homeowner shall not file a lawsuit against the contractor until the conditions precedent have been fulfilled. In the event the homeowner files a lawsuit against the contractor without fulfilling the conditions precedent, the contractor shall be entitled to a stay of proceedings until such conditions have been fulfilled. If the conditions precedent have been fulfilled, the homeowner may seek remedies against the contractor as provided by law.

Added by Laws 2006, c. 111, § 2, eff. Nov. 1, 2006. Amended by Laws 2012, c. 111, § 1, eff. Nov. 1, 2012.

§15-766. Application of closing out provisions.

The provisions of this act relating to closing out sales shall not apply to any forced sale of goods, wares or merchandise required to be sold under order of any federal or state court, nor to farm sales, community sales or to auction sales of farm or nursery products, nor to the discontinuance of a particular line of goods, wares or merchandise by a person continuing in business at the present location.

Laws 1979, c. 145, § 3.

§15-767. License for closing out sale - Application - Forms - Contents - Affidavits - Fees - Violations.

A. It shall be unlawful for any person to advertise or conduct a closing out sale unless a license is first obtained to conduct such sale. Any applicant for a closing out sale license shall file an application in writing and under oath with the clerk of the district court, on an application form prescribed by the Attorney General. The application form shall contain the following information, and such other information as the Attorney General may require:

1. The name and address of the owner of the goods, wares, or merchandise to be sold;

2. A description of the place of business where the sale is to be held;

3. The name and address of the person holding or conducting the sale;

4. The nature of the occupancy of the place where the sale is to be held, whether by lease or otherwise, and the effective date of termination of the occupancy;

5. A full and complete statement of the facts regarding the proposed sale, including the reason the sale is being conducted, the manner in which the sale will be conducted, and the commencement and termination date of the sale; and

6. A complete and detailed inventory of the goods, wares, and merchandise to be offered at the sale as disclosed by the records of the applicant or a statement of both the cost and retail value of the inventory of goods, wares, and merchandise to be offered at the sale, based on the physical inventory used for the most recent federal income tax returns adjusted for sales, purchases, and markdowns of the applicant. Adjustments for sales, purchases, and markdowns shall be shown on a monthly basis to the date of the application.

B. Each application shall be accompanied by an affidavit signed by the applicant attesting to the facts in the application.

C. A fee of Twenty-five Dollars ($25.00) shall be charged by the clerk of the district court for the issuance of a license.

D. Any person making a false statement in the application, upon conviction, shall be guilty of a felony.
Added by Laws 1979, c. 145, § 4, eff. Oct. 1, 1979. Amended by Laws 1983, c. 103, § 2, eff. Nov. 1, 1983; Laws 1997, c. 133, § 135, eff. July 1, 1999.
NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 135 from July 1, 1998, to July 1, 1999.

§15-768. District attorney to receive copy of application - Objections - Grounds for denying application.

Upon receipt of an application, the clerk shall forward a copy of the application to the district attorney of the same district the court clerk is located in who may cause an investigation as deemed necessary for the facts contained therein. No license shall be issued by the clerk before ten (10) days has elapsed from the filing of the application within which period the district attorney may file an objection to the application, setting forth one or more of the following facts or circumstances, any one which shall be grounds for denying the application for a license:

1. That the applicant has been granted more than one license for a "closing out sale" within thirty-six (36) months preceding the date of the filing of the application;

2. That the inventory includes goods, wares or merchandise on consignment or purchased by the applicant or added to the stock in contemplation of a closing out sale and for the purpose of selling the same at such sale. For the purpose of this paragraph, any unusual addition to the stock of goods, wares and merchandise made within ninety (90) days prior to the filing of an application, unless so stated and explained in the application, shall be prima facie evidence that such addition was made in contemplation of a closing out sale and for the purpose of selling such stock at the sale;

3. That the applicant, in the ticketing of the goods, wares and merchandise to be offered at the sale, has misrepresented the value and original retail price of the goods; or

4. That any representation made in the application is false.
Added by Laws 1979, c. 145, § 5, eff. Oct. 1, 1979. Amended by Laws 2012, c. 258, § 2, emerg. eff. May 15, 2012.

§15-769. Issuance of license - Conditions on sale.

If it appears to the clerk that all the statements in the application are true, that the proposed sale is of the character represented therein, that the application is in full compliance with the terms and conditions of the Oklahoma Consumer Protection Act, that the required license fee has been paid, and that the ten-day waiting period has expired with no objections from the district attorney, the clerk shall issue a license to the applicant

authorizing the advertising and conducting of the sale as described in the application, subject to the following conditions:

1. Only the goods, wares, and merchandise included in the inventory attached to the application shall be sold at the sale;

2. Upon the commencement of the sale and for its duration the license shall be prominently displayed in the place of sale by the licensee;

3. All advertisement of discount prices shall indicate that the prices are discounted from the manufacturer's suggested retail price and the manufacturer's suggested retail price shall be accurately displayed in such advertisements or all advertisements of discount prices shall indicate that the prices are discounted from the regular sales prices at which the merchandise has been offered at the location of the sale for at least sixty (60) days prior to the sale and such regular prices shall be accurately displayed in advertisements where discount prices are advertised by specific dollar amounts or percentage amounts of savings;

4. No closing out sale shall be held at any location other than the regular place of business of the licensee and the licensee shall have conducted business at such location for a period of at least six (6) months; and

5. The licensee shall keep suitable books during the sale, at the location at which the sale is conducted. Daily entries shall be made in said books showing:

a. dollar amount of retail sales, and

b. dollar amount of markdowns; for the purposes of the Oklahoma Consumer Protection Act, the term markdowns is the difference between retail and wholesale price of goods wholesaled by the licensee, and

c. dollar amount, both retail and cost price, of goods on back order received, and

d. dollar amount of wholesale sale.

The books shall be open for inspection during business hours by appropriate officials responsible for the enforcement of this act. Amended by Laws 1983, c. 103, § 3, eff. Nov. 1, 1983.

§15-770. Revocation of license.

The district attorney of the district where the application was filed shall revoke any license issued pursuant to the provisions of this act, if he finds that the licensee has:

1. Violated the provisions of this act relating to closing out sales;

2. Made any material misstatement in his application;

3. Failed to include in the inventory required hereunder all the goods, wares and merchandise being offered for sale;

4. Offered or permitted to be offered at the sale any goods, wares or merchandise not included in the inventory attached to the application;

5. Failed to keep suitable records of the sale; or

6. Made or permitted to be made any false or misleading statements or representations in advertising the sale, or in displaying, ticketing, or pricing goods, wares or merchandise offered for sale.

Laws 1979, c. 145, § 7.

§15-771. Appeals.

Any applicant for a license who is aggrieved by the denial, refusal or revocation of a licensee may appeal to the district court of the county in which the denial, revocation or suspension occurred. The appeal shall be taken by filing a written notice of appeal with the district attorney within ten (10) days after the order is made. The applicant shall, within ten (10) days of that notice, file a petition in the district court asking for the vacation or modification of the order denying the license. All such appeals filed in the district court shall be set for hearing by the court within thirty (30) days from the date the petition is filed.

If the applicant desires to have the order stayed during the appeal, he may file with the petition a supersedeas bond in an amount to be fixed by the court. The bond shall be conditioned that the applicant will prosecute the appeal without delay and during the pendency thereof, shall comply with the laws relating to "closing out sales". If the appeal is denied, the applicant shall pay all court costs incurred in the appeal.

Laws 1979, c. 145, § 8.

§15-775A.1. Legislative findings.

The Legislature hereby finds, determines and declares that the use of telephones for commercial solicitation, including, but not limited to, cellular telephone text messages, is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the Legislature finds that the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers and, particularly, elderly, homebound and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

Added by Laws 1994, c. 235, § 5, eff. Sept. 1, 1994. Amended by Laws 2011, c. 369, § 2, eff. July 1, 2011.

§15-775A.2. Definitions.

As used in Section 775A.1 et seq. of this title, unless the context otherwise requires:

1. "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include a telephone call made by:

a. a person offering or selling a security as defined in Section 1-102 of Title 71 of the Oklahoma Statutes if:

(1) the security is either registered as required by Section 1-301 of Title 71 of the Oklahoma Statutes, or exempt from registration under Section 1-201 of Title 71 of the Oklahoma Statutes and general or public solicitation is not prohibited or the security is a federal covered security for which a notice filing has been made under Section 1-302 of Title 71 of the Oklahoma Statutes, and

(2) the person is registered as required by Section 1-401, 1-402, 1-403 or 1-404 of Title 71 of the Oklahoma Statutes as a broker-dealer as defined in Section 1-102 of Title 71 of the Oklahoma Statutes, an agent as defined in Section 1-102 of Title 71 of the Oklahoma Statutes, an investment adviser as defined in Section 1-102 of Title 71 of the Oklahoma Statutes, or an investment adviser representative as defined in Section 1-102 of Title 71 of the Oklahoma Statutes, unless expressly excluded from such definitions, or such person is exempted from registration under Section 1-401, 1-402, 1-403 or 1-404 of Title 71 of the Oklahoma Statutes,

b. a person soliciting the sale of any book, record, audio tape, compact disc or video if the person allows the purchaser to review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 Code of Federal Regulations 425,

c. a person soliciting a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions or votes, or a person soliciting solely for a political or religious cause or purpose,

d. a paid solicitor or charitable organization which is required to and which has complied with the notice and reporting requirements of Section 552.3 of Title 18 of the Oklahoma Statutes or a person who is excluded from such notice and reporting requirements by Section 552.4 of Title 18 of the Oklahoma Statutes,
e. a supervised financial organization, as defined in Section 1-301 of Title 14A of the Oklahoma Statutes, and its employees, when acting within the scope of their employment,
f. a supervised lender, as defined in subsection (2) of Section 3-501 of Title 14A of the Oklahoma Statutes, and its agents and employees, when acting within the scope of their employment,
g. a person or an affiliate of a person who is regulated by the Insurance Commission pursuant to Title 36 of the Oklahoma Statutes,
h. a person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had a previous face-to-face meeting in the course of such person's business,
i. any governmental entity or employee thereof, acting in the employee's official capacity,
j. a person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser,
k. a person or an affiliate of a person whose business is regulated by the Oklahoma Real Estate Commission,
l. a person whose conduct is within the exclusive jurisdiction of the federal Commodity Futures Trading Commission as granted under the federal "Commodity Exchange Act", as amended,
m. a seller of food for immediate consumption when the sale to one purchaser does not exceed Three Hundred Dollars ($300.00),
n. a person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to

review the merchandise without obligation for at least seven (7) days and provides a full refund for the return of undamaged merchandise within thirty (30) days after receipt of the returned merchandise,

o. an issuer or a subsidiary of an issuer that has a class of securities which is subject to Section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. 781, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) (2) of that section,

p. a person who has been operating for at least three (3) years a retail business establishment in Oklahoma under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location,

q. any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five (5) years under the same business name and seventy-five percent (75%) or more of its services are performed on behalf of sellers exempt from this section. Nothing in this paragraph shall be construed to exempt any commercial telephone seller that contracts with a telephone marketing service company for telemarketing sales service from the requirements set forth in Section 775A.3 of this title,

r. a person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling,

s. a person or an affiliate of a person whose business is regulated by the Corporation Commission,

t. a person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues, or

u. a person or affiliate of a person who offers or sells products or services by means of a cellular telephone text message only to persons who have affirmatively indicated their opt-in consent to receive cellular telephone text messages for such purpose from such person or affiliate;

2. "Commercial telephone solicitation" means:

a. an unsolicited telephone call or message, including, but not limited to, a cellular telephone text message,

to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device or electronic text message delivery device, for the purpose of inducing the person to purchase or invest in goods, services or property or offering an extension of credit,

b. any other communication by a commercial telephone seller in which:
   (1) a gift, award, prize or contest is offered and a telephone call response from the intended purchaser is invited,
   (2) a loan, credit card or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited, or
   (3) a sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response, or

c. any other communication by a commercial telephone seller which includes representations about the price, quality or availability of goods, services or property and which invites a response by telephone or cellular telephone text message, including pay-per-call or pay-per-text service calls, or which is followed by a telephone call or message, including, but not limited to, a cellular telephone text message, to the intended purchaser by a salesperson;

3. "Pay-per-call" or "pay-per-text" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number;

4. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust or any other individual with similar supervisory functions with respect to any person;

5. "Purchaser" means a person who receives or responds to a commercial telephone solicitation;

6. "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made; and

7. "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property or an extension of credit by a commercial telephone seller and includes all communications which precede such payment of money.

Added by Laws 1994, c. 235, § 6, eff. Sept. 1, 1994. Amended by Laws 1999, c. 325, § 3, eff. Nov. 1, 1999; Laws 2011, c. 369, § 3, eff. July 1, 2011.

§15-775A.3. Registration with Attorney General.

A. No commercial telephone seller shall conduct business in this state without having registered with the Attorney General at least ten (10) days prior to the conduct of such business. Individual employees of the commercial telephone seller are not required to register. A commercial telephone seller conducts business in this state if the telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

B. A registration shall be effective for one (1) year after the date of filing with the Attorney General. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the Attorney General, but such filing fee shall not exceed Two Hundred Fifty Dollars ($250.00) for an application for registration or One Hundred Dollars ($100.00) for an application for renewal. Any registration not renewed by the commercial telephone seller by the anniversary date of the registration shall lapse. If the registration lapses, the commercial telemarketer must file another application accompanied by a fee of Two Hundred Fifty Dollars ($250.00). All monies collected under this subsection shall be placed to the credit of the Attorney General's Revolving Fund created in Section 20 of Title 74 of the Oklahoma Statutes.

C. Whenever, prior to expiration of a commercial telephone seller's annual registration, there is a material change in the information required by subsection E of this section, the seller shall, within ten (10) days, file an addendum updating the information with the Attorney General.

D. Each application for registration shall be in writing and shall contain such information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as is required by law. The application shall be submitted on a form provided by the Attorney General and shall be verified by a declaration signed by each principal of the commercial telephone seller under penalty of perjury. The declaration shall specify the date and location of signing. The information submitted pursuant to this section shall be available for public inspection.

E. Each application for registration or renewal pursuant to this section shall contain the following information:

1. The name or names of the commercial telephone seller, including all names under which the commercial telephone seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization;

2. The seller's business form and the date and place of organization;

3. The complete street addresses of all locations from which the commercial telephone seller is or will be conducting business, including a designation of the seller's principal business location;

4. A listing of all telephone numbers, including pay-per-call numbers, to be used by the commercial telephone seller;

5. The name, residential address, and position held by each principal of the commercial telephone seller and the names, residential addresses and positions of those persons who have management responsibilities in connection with the commercial telephone seller's business activities;

6. A description of the goods, services, property or extension of credit the commercial telephone seller is offering for sale and a copy of all sales scripts the commercial telephone seller requires salespersons to use when soliciting prospective purchasers, or, if no sales script is required to be used, a description of the sales presentation;

7. All rules, regulations, terms, restrictions and conditions to receiving any prize, bonus, award, gift or premium, if applicable, including a description of each prize, bonus, award, gift or premium, and the actual or approximate odds of a purchaser's receiving such prize, bonus, award, gift or premium;

8. A copy or representative sample of all written materials the seller sends to any purchaser; and

9. Such additional information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as may reasonably be required by the Attorney General. Added by Laws 1994, c. 235, § 7, eff. Sept. 1, 1994. Amended by Laws 1994, c. 382, § 12, eff. Sept. 1, 1994; Laws 1999, c. 325, § 4, eff. Nov. 1, 1999.

§15-775A.4. Unlawful telemarketing practices.

A. A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

1. Conducts business as a commercial telephone seller without having registered with the Attorney General, as required by Section 775A.3 of this title;

2. Fails to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services or property at any time before the expiration of three (3) business days after the purchaser's receipt of such goods, services or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked;

3. Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty (30) days after the commercial telephone seller receives notice of cancellation from the purchaser, except that:

a. if the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty (30) days after the commercial telephone seller's receipt of the returned goods or property, and

b. if the purchaser has received services during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the commercial telephone seller is not required to refund payments to the purchaser;

4. Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph 2 of this subsection;

5. Misrepresents to any person that the person has won a contest, sweepstakes or drawing, or that the person will receive free goods, services or property;

6. Represents that the seller's goods, services or property are “free” if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services or property;

7. Makes any reference to the commercial telephone seller's compliance with this act to any purchaser without also disclosing that compliance with this act does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods or services;

8. Uses equipment or techniques the purpose of which is to intentionally block or avoid detection of the commercial telephone seller’s identity or telephone number by caller identification devices;

9. Uses equipment, systems or procedures which automatically dial and engage the telephone number of more than one person at a time resulting in a number of abandoned calls per day that are more than five percent (5%) of the number of answered calls per day in any campaign; or

10. Engages in any deceptive trade practice defined in Section 752 of this title.

B. Paragraphs 2 and 4 of subsection A of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a cancellation of services by giving notice to the seller within seven (7) days after receipt by the consumer and the seller processes the refund or cancellation within thirty (30) days after receipt of the returned

merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words "satisfaction guaranteed", "free inspection" or "no-risk guarantee" satisfy the disclosure requirements of this subsection.

C. The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

D. Any violations of this act are violations of the Oklahoma Consumer Protection Act.

Added by Laws 1994, c. 235, § 8, eff. Sept. 1, 1994. Amended by Laws 1999, c. 184, § 1, eff. Nov. 1, 1999; Laws 1999, c. 325, § 5, eff. Nov. 1, 1999; Laws 2002, c. 317, § 1, eff. July 1, 2002.

§15-775A.5. Bond - Sureties.

The applicant shall, at the time of making application, file with and have approved by the Attorney General a bond in which the applicant shall be the principal obligor, in the sum of Ten Thousand Dollars ($10,000.00) with one or more sureties whose liability is the aggregate as such sureties shall at least equal the said sum. The said bond shall run to the Attorney General for the use of the state and to any person who may have a cause of action against the obligor of said bond for any violation of the act.

Added by Laws 1999, c. 325, § 6, eff. Nov. 1, 1999.

§15-775B.1. Short title.

This act shall be known and may be cited as the "Telemarketer Restriction Act".

Added by Laws 2002, c. 72, § 1, eff. July 1, 2002.

§15-775B.2. Definitions.

As used in the Telemarketer Restriction Act:

1. "Commercial purposes" means relating to the sale or offer for sale of goods or services. "Commercial purposes" does not mean solicitation of funds or other support for a charitable or religious activity; political candidate, cause, or organization; or any activity of a not-for-profit entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code;

2. "Consumer" means any natural person who is a resident of this state and shall not include any business association, partnership,

firm, corporation, and its affiliates or subsidiaries, or other business entity;

3. “Established business relationship” means a prior relationship formed within the preceding twenty-four (24) months or an existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party;

4. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries, or other business entity;

5. "Telemarketer" means any person who, for commercial purposes, initiates a telemarketing sales call or message, including, but not limited to, a cellular telephone text message, to a consumer located in this state or any person who directly controls or supervises the conduct of a telemarketer; and

6. "Telemarketing" means any plan, program, or campaign which is conducted for commercial purposes, by use of one or more telephones or electronic messaging devices and which involves a telephone call or message, including, but not limited to, a cellular telephone text message, initiated by a telemarketer to a consumer located within this state at the time of the call or message; “telemarketing” may include use of random dialing or other devices for such purposes and use of recorded or simulated voices or automated electronic text messages delivery devices. “Telemarketing” does not include a telephone call which is made for the sole purpose of arranging a subsequent face-to-face meeting between a salesperson and the consumer.

Added by Laws 2002, c. 72, § 2, eff. July 1, 2002. Amended by Laws 2003, c. 357, § 1, emerg. eff. June 3, 2003; Laws 2011, c. 369, § 4, eff. July 1, 2011.

§15-775B.3. Registry of consumers not desiring unsolicited telemarketing calls.

The Attorney General shall establish, and thereafter maintain, a statewide registry which shall contain a list of consumers who desire not to receive unsolicited telemarketing sales calls or messages, including, but not limited to, a cellular telephone text message. The Attorney General may, pursuant to The Oklahoma Central Purchasing Act, contract with a private vendor to establish and maintain the registry.

Added by Laws 2002, c. 72, § 3, eff. July 1, 2002. Amended by Laws 2011, c. 369, § 5, eff. July 1, 2011.

§15-775B.4. Notice of establishment of no-telemarketing-sales-call registry - Inclusion and removal of consumer names and numbers.

The Attorney General shall publicize notice to consumers of the establishment of the no-telemarketing-sales-call registry and may provide, upon request, explanatory information concerning the provisions of the Telemarketer Restriction Act. Any consumer who desires to be included in the listing shall notify the Attorney General by calling a toll-free number provided by the Attorney General, or in any other manner, and at such times, as the Attorney General may prescribe, which may include notification via the Internet. The number or numbers of a consumer listed in the registry shall be removed from the registry either by the consumer calling a toll-free number provided by the Attorney General or upon written request by the consumer. The Attorney General shall implement a procedure to verify a consumer request to be added or removed from the registry. The Attorney General shall update the registry not less than quarterly and shall make the registry available to telemarketers by such means and for such fees as are determined by the Attorney General pursuant to the Administrative Procedures Act. The Attorney General is authorized to forward all consumer requests to be included in the registry to the Federal Trade Commission, Federal Communications Commission, or any other agency of the federal government charged with the establishment and maintenance of a nationwide registry of consumers who desire not to receive unsolicited telemarketing sales calls or messages, including, but not limited to, a cellular telephone text message. Except as otherwise provided in the Telemarketer Restriction Act, the registry is privileged and confidential and not subject to the Oklahoma Open Records Act.

Added by Laws 2002, c. 72, § 4, eff. July 1, 2002. Amended by Laws 2003, c. 357, § 2, emerg. eff. June 3, 2003; Laws 2011, c. 369, § 6, eff. July 1, 2011.

§15-775B.5. Rules.

The Attorney General is authorized to adopt and promulgate rules for the implementation, administration, and enforcement of the Telemarketer Restriction Act.

Added by Laws 2002, c. 72, § 5, eff. July 1, 2002.

§15-775B.6. Violation - Administrative fines.

A. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call or message, including, but not limited to, a cellular telephone text message, to any consumer more than thirty (30) days after the consumer’s telephone number or numbers first appear on the registry made available by the Attorney General pursuant to the Telemarketer Restriction Act.

B. Willful violation of subsection A of this section shall be an unlawful telemarketing practice and a violation of the Oklahoma Consumer Protection Act; provided, a call to a consumer with whom the caller has an established business relationship or a call or cellular telephone text message to a consumer whose number has been removed from the registry shall not be a violation of the Telemarketer Restriction Act.

C. In lieu of bringing an action under the Oklahoma Consumer Protection Act, the Attorney General may, in cases where the telemarketer is able to demonstrate that the violation occurred notwithstanding policies of the telemarketer that were an integral part of the training of the individual or individuals responsible for the violation, assess an administrative fine. The Attorney General shall, pursuant to the Administrative Procedures Act, adopt and promulgate rules establishing a schedule of increasing fines to be assessed pursuant to this subsection for multiple and repeated violations.

Added by Laws 2002, c. 72, § 6, eff. July 1, 2002. Amended by Laws 2003, c. 357, § 3, emerg. eff. June 3, 2003; Laws 2011, c. 369, § 7, eff. July 1, 2011.

§15-775B.7. Telemarketer Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General, to be designated the "Telemarketer Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received pursuant to the provisions of the Telemarketer Restriction Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purpose of implementing, administering, or enforcing the provisions of the Telemarketer Restriction Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 2002, c. 72, § 7, eff. July 1, 2002. Amended by Laws 2012, c. 304, § 55.

§15-776.1. Fraudulent electronic mail messages.

A. It shall be unlawful for a person to initiate an electronic mail message that the sender knows, or has reason to know:

1. Misrepresents any information in identifying the point of origin or the transmission path of the electronic mail message;

2. Does not contain information identifying the point of origin or the transmission path of the electronic mail message;

3. Contains false, malicious, or misleading information which purposely or negligently injures a person;

4. Falsely represents that it is being sent by a legitimate online business;

5. Refers or links the recipient of the message to a web page that is represented as being associated with a legitimate online business with the intent to engage in conduct involving the fraudulent use or possession of identifying information; or

6. Directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information for a purpose the recipient believes is legitimate.

B. Any person violating the provisions of this section shall be subject to a civil penalty of up to Five Hundred Dollars ($500.00).

C. All acts and practices declared to be unlawful by subsections A and E of this section shall, in addition, be violations of the Oklahoma Consumer Protection Act.

D. For purposes of this section, an electronic mail message which is declared to be unlawful by subsection A of this section shall be considered a fraudulent electronic mail message or a fraudulent bulk electronic mail message.

E. It shall be unlawful for any person to sell, give, or otherwise distribute or possess with the intent to sell, give or distribute software which:

1. Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

2. Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

3. Is marketed by that person or another acting in concert with that person and with that person’s knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

Added by Laws 1999, c. 337, § 1, eff. July 1, 1999. Amended by Laws 2006, c. 56, § 1, eff. Nov. 1, 2006.

§15-776.2. Civil remedies.

A. Any person whose property or person is injured by reason of a violation of any provision of this act may sue for and recover any damages sustained, and also recover the costs of bringing the suit. The term “damages” shall include but shall not be limited to the loss of profits.

B. If the injury arises from the transmission of fraudulent electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney fees and costs. In lieu of actual damages, the injured person may elect to recover the lesser of Ten Dollars ($10.00) for each unsolicited bulk electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars ($25,000.00) per day. The injured person shall not

have a cause of action against the electronic mail service provider that merely transmits the fraudulent electronic mail over its computer network.

C. If the injury arises from the transmission of fraudulent electronic mail, an injured electronic mail service provider may also recover attorney fees and costs. In lieu of actual damages, the injured electronic mail service provider may elect to recover the greater of Ten Dollars ($10.00) for each fraudulent electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars ($25,000.00) per day.

D. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

E. The provisions of this act shall not be construed to limit any right of a person to pursue any additional civil remedy otherwise allowed by law.

Added by Laws 1999, c. 337, § 2, eff. July 1, 1999.

§15-776.3. Jurisdiction.

Transmitting or causing the transmission of fraudulent electronic mail to or through a computer network of an electronic mail service provider located in this state shall constitute an act in this state. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against that person. Nothing contained in this act shall limit, restrict, or otherwise affect the jurisdiction of any court of this state over foreign corporations which are subject to service of process pursuant to the provision of any other law.

Added by Laws 1999, c. 337, § 3, eff. July 1, 1999.

§15-776.4. Definitions.

For purposes of Sections 776.1 through 776.3 of this title:

1. "Electronic mail messages" means a message, file, or other information that is transmitted through a local, regional, or global network regardless of whether the message, file, or other information is viewed, stored for retrieval at a later time, printed on to paper or other similar material, or is filtered or screened by a computer program that is designed or intended to filter or screen items of electronic mail;

2. "Fraudulent electronic mail message" or "fraudulent bulk electronic mail message" means any electronic mail message or bulk electronic mail message which is declared unlawful by subsection A of Section 776.1 of this title;

3. "Initiate the transmission" means the action of the original sender of an electronic mail message, not to the action by any intervening computer service that may handle or retransmit the message;

4. "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one computer with the capability to transmit data among them through the communications facilities;

5. "Electronic mail service provider" means any person who:

a. is an intermediary in sending or receiving electronic mail, and

b. provides to end-users of electronic mail services the ability to send or receive electronic mail;

6. "Identifying information" means information that alone or in conjunction with other information identifies an individual, including but not limited to:

a. name, social security number, date of birth, and government-issued identification number,

b. unique biometric data, including the fingerprint, voice print, and retina or iris image of an individual,

c. unique electronic identification number, address, and routing code, financial institution account number, and

d. telecommunication identifying information or access device; and

7. "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Added by Laws 1999, c. 337, § 4, eff. July 1, 1999. Amended by Laws 2006, c. 56, § 2, eff. Nov. 1, 2006.

§15-776.5. Commercial electronic mail – Definitions.

For purposes of Sections 1 through 3 of this act:

1. "Electronic mail" means an electronic message or computer file containing an image of a message that is transmitted between two or more computers or electronic terminals and includes electronic messages that are transmitted within or between computer networks;

2. "Electronic mail service provider" means any person who:

a. is an intermediary in sending or receiving electronic mail, and

b. provides to end-users of electronic mail services the ability to send or receive electronic mail;

3. "Established business relationship" means a prior or existing relationship formed by a voluntary communication between a person or entity and the recipient with or without an exchange of consideration, on the basis of an inquiry, application, purchase or use by the recipient regarding products or services offered by such person or entity;

4. "Unsolicited commercial electronic mail message" means a commercial electronic mail message sent without the consent of the recipient, by a person with whom the recipient does not have an established business relationship. "Unsolicited commercial electronic mail message" does not include electronic mail messages where the sender:

a. is an organization using electronic mail to communicate exclusively with its members,
b. is an organization using electronic mail to communicate exclusively with its employees or contractors, or both,
c. has the consent of the recipient, or
d. has an established business relationship with the recipient, as defined in this section; and

5. "Commercial electronic mail message" means an electronic mail message sent for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services. Commercial electronic mail message does not include an electronic mail message:

a. to which an electronic mail service provider has attached an advertisement in exchange for free use of an electronic mail account, when the user has agreed to the arrangement,
b. between persons with a prior business relationship, or
c. between persons with a personal relationship.

Added by Laws 2003, c. 129, § 1, eff. Nov. 1, 2003. Amended by Laws 2003, c. 310, § 1, eff. Nov. 1, 2003.

§15-776.6. Commercial electronic messages – Violations.

A. It shall be a violation of this act for any person to transmit a commercial electronic mail message that:

1. Falsifies electronic mail transmission information or other routing information for the unsolicited commercial electronic message; or

2. Contains false or misleading information in the subject line.

B. It shall be a violation of this act for any person that sends a commercial electronic mail message to use a third party's internet address or domain name without the third party's consent for the purpose of transmitting electronic mail in a way that makes it appear that the third party was the sender of such mail.

C. It shall be a violation of this act for any person that sends an unsolicited commercial electronic mail message to fail to use the exact characters "ADV:" as the first four characters in the subject line of an unsolicited commercial electronic mail message.

D. It shall be a violation of this act for any person that sends an unsolicited commercial electronic mail message containing sexually explicit material, or advertising sexually explicit goods or services, to fail to use the exact characters "ADV-ADULT:" as the

first ten characters in the subject line of such an unsolicited commercial electronic mail message.

E. It shall be a violation of this act for any person that sends an unsolicited commercial electronic mail message to fail to provide a mechanism allowing recipients to easily and at no cost remove themselves from the sender's electronic mail address lists so they are not included in future mailings. A sender of an unsolicited commercial electronic mail message shall remove the recipient from their electronic mail message list if the sender receives an electronic mail message from the recipient to the sender-operated return electronic mail address that indicates anywhere in the subject line or text that the recipient wants their name removed from the list of the sender.

Added by Laws 2003, c. 129, § 2, eff. Nov. 1, 2003. Amended by Laws 2003, c. 310, § 2, eff. Nov. 1, 2003.

§15-776.7. Unsolicited commercial electronic messages – Civil action – Damages, costs, attorney fees.

A. Any person whose property or person is injured by reason of a violation of any provision of this act may recover any damages sustained and the costs of suit. Without limiting the generality of the term, "damages" shall include loss of profits.

B. If the injury arises from the transmission of unsolicited or commercial electronic mail messages, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and costs, and may elect, in lieu of actual damages, to recover the lesser of Ten Dollars ($10.00) for each and every unsolicited commercial electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars ($25,000.00) per day. The injured person shall not have a cause of action against the electronic mail service provider, which merely transmits the unsolicited commercial electronic mail message over its computer network.

C. If the injury arises from the transmission of unsolicited or commercial electronic mail messages, an injured electronic mail service provider may also recover attorneys' fees and costs and may elect, in lieu of actual damages, to recover the greater of Ten Dollars ($10.00) for each and every unsolicited commercial electronic mail message transmitted in violation of this act, or Twenty-five Thousand Dollars ($25,000.00) per day.

D. All acts and practices declared to be unlawful in Section 2 of this act shall, in addition, be violations of the Oklahoma Consumer Protection Act.

E. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and

computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

F. An e-mail service provider does not violate this section and the injured party shall not have a cause of action against an electronic mail provider due to the fact that the electronic mail provider:

1. Is an intermediary between the sender and recipient in the transmission of an electronic mail message that violates this section; or

2. Provides transmission of unsolicited commercial electronic mail messages over the provider's computer network or facilities, or shall be liable for any action it voluntarily takes in good faith to block the receipt or transmission through its service of any electronic mail advertisements that it believes is, or will be sent, in violation of this section.

Added by Laws 2003, c. 129, § 3, eff. Nov. 1, 2003. Amended by Laws 2003, c. 310, § 3, eff. Nov. 1, 2003.

§15-776.8. Short title.

Sections 4 through 7 of this act shall be known and may be cited as the "Anti-Phishing Act".

Added by Laws 2006, c. 56, § 3, eff. Nov. 1, 2006.

§15-776.9. Definitions.

As used in the Anti-Phishing Act:

1. "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or other information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen those items;

2. "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered;

3. "Identifying information" means information that alone or in conjunction with other information identifies an individual, including but not limited to:

a. name, social security number, date of birth, and government-issued identification number,

b. unique biometric data, including the fingerprint, voice print, and retina or iris image of an individual,

c. unique electronic identification number, address, and routing code, financial institution account number, and

d. telecommunication identifying information or access device;

4. "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service, assigned through a centralized Internet naming authority and composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy; and

5. "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Added by Laws 2006, c. 56, § 4, eff. Nov. 1, 2006.

§15-776.10. Fraudulent use of web page or Internet domain name.

A person may not, with the intent to engage in conduct involving the fraudulent use or possession of the identifying information of a person:

1. Create a web page or Internet domain name that is represented as a legitimate online business without the authorization of the registered owner of the business; and

2. Use that web page or a link to the web page, that domain name, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate.

Added by Laws 2006, c. 56, § 5, eff. Nov. 1, 2006.

§15-776.11. Civil action – Standing – Remedies – Attorney fees and costs – Nature of violations.

A. The following persons may bring a civil action against a person who violates the Anti-Phishing Act:

1. A person engaged in the business of providing Internet access service to the public who is adversely affected by the violation; or

2. An owner of a web page or trademark who is adversely affected by the violation.

B. A person bringing an action under this Act may:

1. Seek injunctive relief to restrain the violator from continuing the violation;

2. Recover damages in an amount equal to the greater of:

a. actual damages arising from the violation, or

b. One Hundred Thousand Dollars ($100,000.00) for each violation of the same nature; or

3. Seek both injunctive relief and recover damages as provided for in this subsection.

C. The court may increase an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.

D. A plaintiff who prevails in an action filed under this section is entitled to recover reasonable attorney fees and court costs.

E. For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

F. All acts and practices declared to be unlawful under this Act shall, in addition, be violations of the Oklahoma Consumer Protection Act.

Added by Laws 2006, c. 56, § 6, eff. Nov. 1, 2006.

§15-776.12. Exemptions.

The Anti-Phishing Act shall not apply to the good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information by a telecommunications provider or Internet service provider.

Added by Laws 2006, c. 56, § 7, eff. Nov. 1, 2006.

§15-776.20. Legislative findings.

The Legislature finds that the citizens of this state are potential targets of a phone scam known as caller ID spoofing or caller ID fraud that allows a caller to hide his or her true identity by modifying caller ID information with the intent to mislead, defraud or deceive the recipient of the telephone call. It is, therefore, the intent of the Anti-Caller ID Spoofing Act to protect people from such scams which have led to the loss of personal information, harassment and potentially threatening phone calls.

Added by Laws 2007, c. 107, § 1, eff. Nov. 1, 2007.

§15-776.21. Short title.

This act shall be known and may be cited as the "Anti-Caller ID Spoofing Act".

Added by Laws 2007, c. 107, § 2, eff. Nov. 1, 2007.

§15-776.22. Definitions.

As used in the Anti-Caller ID Spoofing Act:

1. "Caller" means a person who places a call by a telephone or over a telephone line, even if the person begins the call on a computer;

2. "Caller identification system" means a listing of a caller's name, telephone number, or name and telephone number that is shown to a recipient of a call when the recipient answers;

3. "Insert" means insert by voice communication, by written communication or by otherwise entering into a computer; and

4. "False information" means data that misrepresents the identity of the caller to the recipient of a call; except that when a

person making an authorized call on behalf of another person inserts the name, telephone number or name and telephone number of the person on whose behalf the call is being made, such information shall not be deemed false information.
Added by Laws 2007, c. 107, § 3, eff. Nov. 1, 2007.

§15-776.23. Unlawful acts - Exceptions - Penalties.

A. A caller may not knowingly insert false information into a caller identification system with the intent to mislead, defraud or deceive the recipient of a telephone call.

B. The provisions of this section shall not apply to:

1. Any blocking of caller identification information;

2. Any law enforcement agencies of the federal government, the state government, a county or a municipality; or

3. Any intelligence or security agencies of the federal government.

C. Any person who knowingly inserts false information with the intent to mislead, defraud or deceive the recipient of a telephone call into a caller identification system shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail for not more than one (1) year or fined not more than Ten Thousand Dollars ($10,000.00) per incident, or by both such fine and imprisonment.

D. All acts and practices declared to be unlawful in this section shall, in addition, be violations of the Oklahoma Consumer Protection Act.
Added by Laws 2007, c. 107, § 4, eff. Nov. 1, 2007.

§15-777.1. Short title.

This act shall be known and may be cited as the "Emergency Price Stabilization Act".
Added by Laws 1999, c. 154, § 1, emerg. eff. May 13, 1999.
NOTE: Editorially renumbered from § 776.1 of this title to avoid duplication in numbering.

§15-777.2. Definitions.

As used in the Emergency Price Stabilization Act:

1. "Dwelling unit" means any structure or part of a structure which is used as a home, residence, or sleeping place by one or more persons and includes, but is not limited to, lodging establishments, hotels, motels, boarding houses, inns, single-family residences, duplexes, and apartments;

2. "Emergency" means any occasion or instance including, but not limited to, any natural disaster such as a tornado, storm, high water, earthquake, landslide, mudslide, snowstorm, or drought, and regardless of cause, any fire, flood, or explosion, determined by the Governor of this state or by the President of the United States to

require extraordinary measures to save lives, to protect property, or to promote public health and safety, or to lessen or avert the threat of a catastrophe. "Emergency" includes a civil defense or disaster emergency as defined by the Oklahoma Civil Defense and Emergency Resources Management Act of 1967 and any emergency or major disaster as defined by any federal disaster relief act;

3. "Emergency area" means the county or counties affected by an emergency, any county or part of a county specifically identified in a declaration of emergency issued by the Governor of this state or by the President of the United States, and all counties contiguous with the affected county;

4. "Goods" means all things which are movable at the time of sale, rental, or lease other than the money with which the price is to be paid and includes any services which are incidental to the sale of the goods; and

5. "Services" means any duty or labor to be rendered by one person to another and includes any goods which are incidental to the performance of the service. "Services" also includes, but is not limited to:

a. the sale of utilities including, but not limited to, electricity, natural gas, telecommunications, and cable television,

b. the sale, rental, or lease of transportation, freight, carriage, moving, and storage, and

c. the rental or lease of vehicles, trailers, and other equipment.

Added by Laws 1999, c. 154, § 2, emerg. eff. May 13, 1999.
NOTE: Editorially renumbered from § 776.2 of this title to avoid duplication in numbering.

§15-777.3. Limitation of action.

An action to enforce the provisions of this act may be filed at any time within one (1) year following the expiration or termination of a declaration of emergency or any modifications or extensions thereof.

Added by Laws 1999, c. 154, § 3, emerg. eff. May 13, 1999.
NOTE: Editorially renumbered from § 776.3 of this title to avoid duplication in numbering.

§15-777.4. Maximum permitted price or rate for sale, rent, or lease of goods, services, dwelling units, or storage space - Application of section.

A. No person for the duration of a declaration of emergency by the Governor of this state or by the President of the United States and for thirty (30) days thereafter shall sell, rent, or lease, or offer to sell, rent, or lease, for delivery in the emergency area, any goods, services, dwelling units, or storage space in the

emergency area at a rate or price which is more than ten percent (10%) above the rate or price charged by the person for the same or similar goods, services, dwelling units, or storage spaces immediately prior to the declaration of emergency unless the increase in the rate or price is attributable:

1. To price increases in applicable regional, national or international petroleum commodity markets; or

2. Only to factors unrelated to the emergency and does not include any increase in profit to the seller or owner.

B. Upon the expiration of the period described in subsection A of this section and for one hundred eighty (180) days thereafter, no person shall, within the emergency area, rent or lease or offer to rent or lease any dwelling unit or storage space or sell or offer to sell goods for use within the emergency area to repair, restore, remodel, or construct any dwelling unit for a price of more than ten percent (10%) above the price charged by that person for the dwelling unit, storage space, or goods immediately prior to the declaration of emergency unless the increase in the price is attributable to:

1. Price increases in applicable regional, national, or international petroleum commodity markets; or

2. Factors unrelated to the emergency and does not include any increase in profit to the seller or owner.

C. A rate or price increase approved by the appropriate governmental agency is not a violation of this act.

D. This section shall not apply to growers, producers, or processors of raw or processed food products, except for retail sales of such products to a consumer.

E. This section shall not apply to sales, rentals, or leases of goods from a catalog when the catalog is made available in the normal course of business both prior to and after the declaration of emergency to all persons regardless of location in the emergency area.

F. This section shall not apply to advertised rates and prices which are subject to a published expiration date within or immediately prior to the declaration of emergency.

Added by Laws 1999, c. 154, § 4, emerg. eff. May 13, 1999. Amended by Laws 2008, c. 74, § 1, emerg. eff. April 22, 2008.

NOTE: Editorially renumbered from § 776.4 of this title to avoid duplication in numbering.

§15-777.5. Violations.

Any violation of the provisions of this act is a violation of the Oklahoma Consumer Protection Act.

Added by Laws 1999, c. 154, § 5, emerg. eff. May 13, 1999.

NOTE: Editorially renumbered from § 776.5 of this title to avoid duplication in numbering.

§15-778. Military service member contracts - Termination, suspension, reinstatement.

A. As used in this section, "service member" means:

1. A member of the organized militia who is called into active service of the state by the Governor for thirty (30) or more consecutive days; or

2. A member of the Armed Forces of the United States who is called into active federal service under Title 10 of the United States Code.

B. Except as provided in subsection G of this section, a service member who has obtained the following services from a telecommunications service provider, an Internet service provider, a health club, a health spa or a provider of television services may terminate or suspend the provision of services upon written notice and as provided in subsection C of this section:

1. Telecommunications services, as defined in Section 139.102 of Title 17 of the Oklahoma Statutes;

2. Internet Services;

3. Health spa services, as defined in Section 2001 of Title 59 of the Oklahoma Statutes;

4. Exercise or athletic activities offered by a health club; and

5. Television services, including but not limited to cable television, direct satellite and other television-like services.

C. The service member must provide proof to the service provider of the official orders showing that the service member has been called into active service:

1. At the time written notice is given; or

2. If precluded by military necessity or circumstances that make the provision of proof at the time of giving written notice unreasonable or impossible, within ninety (90) days after written notice has been given.

D. A termination or suspension of services under this section is effective on the day written notice is given under subsection C of this section.

E. 1. A service member who terminates or suspends the provision of services under this section and who is no longer in active service may reinstate the provision of services on the same terms and conditions as originally agreed to with the service provider before the termination or suspension upon written notice to the provider that the service member is no longer in active service. Written notice under this subsection must be given within ninety (90) days after termination of the service member's active service.

2. Upon receipt of the written notice of reinstatement, the service provider shall resume the provision of services or, if the services are no longer available, provide substantially similar services within a reasonable time not to exceed thirty (30) days from the date of receipt of the written notice of reinstatement.

F. A service member who terminates, suspends or reinstates the provision of services under this section:

1. May not be charged a penalty, fee, loss of deposit or any other additional cost because of the termination, suspension or reinstatement; and

2. Is not liable for payment for any services after the effective date of the termination or suspension, or until the effective date of a reinstatement of services as described in subsection E of this section.

G. A service member may terminate a contract for any service provided by a commercial mobile radio services provider in accordance with 50 U.S.C. 535a.

Added by Laws 2017, c. 127, § 1, eff. Nov. 1, 2017.

§15-781. Short title.

Sections 1 through 9 of this act shall be known and may be cited as the "Third Party Prescription Act".

Added by Laws 1983, c. 258, § 1, operative July 1, 1983.

§15-782. Legislative findings and intent.

The Legislature finds that certain practices result in increased costs to certain consumers, threaten the availability of pharmaceutical services to the public, are unfair to providers of pharmaceutical services, and are burdensome and costly to those providers. The Legislature further finds that there is a need for regulation of certain practices engaged in by some third party prescription program administrators.

Added by Laws 1983, c. 258, § 2, operative July 1, 1983.

§15-783. Exemptions.

The Third Party Prescription Act shall not apply to any services rendered pursuant to provisions of the vendor drug program authorized by Sections 204 and 204.1 of Title 56 of the Oklahoma Statutes. The Third Party Prescription Act shall not apply to an insurance company which is licensed to transact insurance business in this state and/or administers its own prescription drug program.

Added by Laws 1983, c. 258, § 3, operative July 1, 1983.

§15-784. Third party prescription program defined.

As used in the Third Party Prescription Act, the term "third party prescription program" means any system of providing for the reimbursement of pharmaceutical goods and services under a contractual arrangement or agreement between a provider of such goods and services and another party who is not the consumer of those goods and services. Such programs may include, but not be limited to, insurance plans which provide coverage for prescription drugs or other pharmaceutical services.

Added by Laws 1983, c. 258, § 4, operative July 1, 1983.

§15-785. Requirements for instituting third party prescription programs.

A. No new third party prescription programs shall be instituted in this state unless:

1. The administrator of the program has given written notice of the provisions of the particular program to all pharmacies in this state;

2. All pharmacies in this state have had the opportunity to enroll in that particular program; and

3. Any newly established pharmacy shall be given the opportunity to enroll in any existing third party prescription program in this state.

B. Any agreement or contract entered into in this state between the administrator of a third party prescription program and a pharmacy shall include a statement of:

1. The method and amount of reimbursement to the pharmacy for goods and services rendered to persons enrolled in the program;

2. The frequency of payment by the administrator to the pharmacy for such goods and services rendered; and

3. The method for the adjudication of complaints or the settlement of dispute between the parties.

C. Any contracts for prescription services already existing on June 30, 1983, shall be allowed to remain in effect until June 30, 1984, at which time the contract shall be renegotiated pursuant to the provisions of this act.

Added by Laws 1983, c. 258, § 5, operative July 1, 1983.

§15-786. Identification cards - Ineligibility - Notice.

A. All persons enrolled in a third party prescription program shall be issued an identification card by the administrator of the program which shall be presented when obtaining services from a pharmacy.

B. In the event that a person uses a program identification card to obtain goods and services from a pharmacy when they are no longer eligible for prescription drug services, the administrator shall make one good faith payment for one claim to a pharmacy.

C. Notification of a pharmacy of the ineligibility of a person shall be given by indicating this on the payment voucher on which a good faith payment has been made.

Added by Laws 1983, c. 258, § 6, operative July 1, 1983.

§15-787. Payments.

A. No administrator of a third party prescription program shall deny payment to a pharmacy for goods and services which may have resulted from the fraudulent or illegal use of an identification card

by any person unless the pharmacy has been notified that the card has been canceled or discontinued.

B. No administrator of a third party prescription program shall withhold a payment to any pharmacy beyond the time period specified in the payment schedule provisions of the agreement. Individual claims for payment may be returned to the pharmacy if such claims are incomplete or illegible. Such claims may be resubmitted by the pharmacy to the administrator of the program after appropriate corrections have been made.

Added by Laws 1983, c. 258, § 7, operative July 1, 1983.

§15-788. Reimbursement rate - Right to participate in third party prescription program.

A. No agreement between a program administrator and a pharmacy shall establish reimbursement rates or procedures that result in the reimbursement for goods or services relating to persons covered by the plan which are less than the prevailing rates paid by ordinary consumers for the same or similar legend or nonlegend drugs and pharmaceutical services.

B. The reimbursement rate shall be limited to the maximum of the ninetieth percentile of the range of prevailing rates charged by Oklahoma pharmacies, and shall be determined each year.

C. No third party prescription program administrator shall deny any pharmacy the opportunity to participate in any third party prescription program offered in this state in a manner which will restrain the right of a consumer to select a pharmacy.

Added by Laws 1983, c. 258, § 8, operative July 1, 1983.

§15-789. Enforcement of act - Rules and regulations.

The Insurance Department shall administer and enforce the provisions of this act and shall promulgate rules and regulations as may be necessary to carry out the provisions of this act.

Added by Laws 1983, c. 258, § 9, operative July 1, 1983.

§15-790. Copyright owners and performing rights societies - Royalty contracts.

A. As used in this section:

1. "Area" means a circular geographical region having a twenty-five-mile radius surrounding the business location of a proprietor. In the case of a proprietor with more than one business location, there shall be a separate area for each location for the purposes of this section;

2. "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Pub. L. 94-553 (17 U.S.C., Section 101 et seq.). "Copyright owner" shall not include the owner of a copyright in a

motion picture or audiovisual work, but shall include, but not be limited to, the owner of a copyright in a karaoke machine or similar device;

3. "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.;

4. "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled; and

5. "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.

B. No copyright owner or performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two (72) hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

1. A schedule of the rates and terms of royalties under the contract; and

2. Annual notice, in a form prescribed by the Attorney General, that the proprietor is entitled to the information contained in paragraph 1 of this subsection.

C. Every contract for the payment of royalties executed in this state shall:

1. Be in writing;

2. Be signed by the parties;

3. Contain a provision requiring notification of any rate change thirty (30) days prior to expiration date of the contract; and

4. Include at least the following information:

a. the proprietor's name and business address and the name and location of each place of business to which the contract applies,

b. the duration of the contract, and

c. the schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

D. No performing rights society, or any agent or employee thereof, shall:

1. Enter beyond the usual customer area of a proprietor's business for the purpose of investigating as to the use of copyrighted works by that proprietor or for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or employees of the proprietor, without first presenting proper identification as an agent or employee of a performing rights society to the proprietor or employees of the proprietor and making known to them the purpose of the investigation, discussion or inquiry;

2. Collect or attempt to collect a royalty payment or any other fee, except as provided in a contract executed pursuant to the provisions of this section;

3. Charge or collect a royalty which is unreasonable in comparison to the royalties for similar licenses in the same area;

4. Engage in any coercive conduct, act or practice that is substantially disruptive of a proprietor's business;

5. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

6. Fail to comply with or fulfill any obligations imposed by this section.

E. Any person who violates any provision of this section shall be liable to pay a penalty of not more than Two Thousand Five Hundred Dollars ($2,500.00) for a first violation and a penalty of not more than Ten Thousand Dollars ($10,000.00) for a second and each subsequent offense. The penalty shall be collected and enforced in the name of the state by the Attorney General in a court of competent jurisdiction.

F. A proprietor may bring an action or assert a counterclaim in a court of competent jurisdiction against a copyright owner or performing rights society, or both, to enjoin any violation of this act and to recover any damages sustained by the proprietor as a result of a violation of this section. The proprietor may petition the court to terminate a contract which violates the provisions of this section, and the court in its discretion may void the contract. If successful, the proprietor shall be entitled to recover damages sustained by the proprietor, together with reasonable attorney fees, filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

G. The rights, remedies and prohibitions accorded by the provisions of this section shall be in addition to and cumulative of any other right, remedy or prohibition accorded by common law, federal law or the statutes of this state, and nothing contained in this section shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

H. This section shall not apply to:

1. Contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications

Commission, or to contracts with cable operators, programmers or other transmission services. However, if a copyright owner or performing rights society is licensed by the Federal Communications Commission, this section shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided;

2. Any conduct engaged in for the enforcement of Sections 1979 and 1980 of Title 21 of the Oklahoma Statutes; and

3. Any performing philharmonic.

Added by Laws 1995, c. 248, § 1, eff. Nov. 1, 1995.

§15-795. Short title.

This act shall be known and may be cited as the "Gift Certificate and Gift Card Disclosure Act".

Added by Laws 2005, c. 233, § 1, eff. Nov. 1, 2005.

§15-796. Definitions.

As used in the Gift Certificate and Gift Card Disclosure Act:

1. "Gift card" shall mean a plastic card or other electronic payment device which is:
   a. issued in a predenominated amount or in an amount requested by the consumer,
   b. usable to purchase goods and/or services only at a single merchant or group of merchants that are affiliated through common corporate ownership or control, and
   c. purchased by a consumer on a prepaid basis in exchange for payment;
2. "Gift certificate" shall mean a written promise which is:
   a. issued in a specified amount, indicated on its face, and cannot be increased in value,
   b. usable to purchase goods and/or services only at a single merchant or a group of merchants that are affiliated through common corporate ownership or control, and
   c. purchased by a consumer on a prepaid basis in exchange for payment;
3. "Issuer" shall mean a person or entity engaged in the business of offering goods and/or services for sale at retail who sells gift certificates or gift cards to consumers; and
4. "Prepaid service arrangement" shall mean a method to purchase specific services in advance and which enables the use of the service through a unique access number or authorization code provided manually or electronically to the service provider.

Added by Laws 2005, c. 233, § 2, eff. Nov. 1, 2005. Amended by Laws 2006, c. 59, § 1, eff. Nov. 1, 2006.

§15-797. Unlawful gift certificate or gift card sales – Exemptions – Dormancy fees - Refunds.

A. It is unlawful for any person or entity to sell a gift certificate or gift card whenever to a purchaser that contains any of the following:

1. An expiration date that expires less than sixty (60) months from the date of purchase; and

2. A service fee including, but not limited to, a service fee for dormancy, except as provided in subsection E of this section.

B. A gift certificate or gift card sold without an expiration date is valid until redeemed or replaced.

C. This section does not apply to any of the following gift certificates or gift cards issued on or after November 1, 2005, provided the expiration date appears in capital letters in at least ten-point font on the front of the gift certificate or gift card:

1. Gift certificates or gift cards that are distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money being given in exchange for the gift certificate or gift card by the consumer;

2. Gift certificates or gift cards that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those gift certificates or gift cards is not more than thirty (30) days after the date of sale; and

3. Gift certificates or gift cards that are issued for a food product.

D. Paragraph 2 of subsection A of this section does not apply to a dormancy fee on a gift card or gift certificate that meets all of the following criteria:

1. The remaining value of the gift card or gift certificate is Five Dollars ($5.00) or less each time the fee is assessed;

2. The fee does not exceed One Dollar ($1.00) per month;

3. There has been no activity on the gift card or gift certificate for twenty-four (24) consecutive months including, but not limited to, purchases, the adding of value, or balance inquiries;

4. The holder may reload or add value to the gift card or gift certificate; and

5. A statement is printed on the gift card or gift certificate in at least ten-point font stating the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift card or gift certificate, and at what point the fee will be charged. The statement may appear on the front or back of the gift card or gift certificate, but shall appear in a location where it is visible to any purchaser prior to the purchase thereof.

E. An issuer of gift certificates or gift cards may accept funds from one or more contributors toward the purchase of a gift certificate or gift card intended to be a gift for a recipient,

provided that each contributor is provided with a full refund of the amount that person paid toward the purchase of the gift certificate or gift card upon the occurrence of all of the following:

1. The funds are contributed for the purpose of being redeemed by the recipient by purchasing a gift certificate or gift card;

2. The time in which the recipient may redeem the funds by purchasing a gift certificate or gift card is clearly disclosed in writing to the contributors and the recipient; and

3. The recipient does not redeem the funds within the time described in paragraph 2 of this subsection.

Added by Laws 2005, c. 233, § 3, eff. Nov. 1, 2005. Amended by Laws 2006, c. 59, § 2, eff. Nov. 1, 2006.

§15-798. Gift certificate or gift card value – Trust property.

A. A gift certificate or gift card constitutes value held in trust by the issuer of the gift certificate or gift card on behalf of the beneficiary of the gift certificate or gift card. The value represented by the gift certificate or gift card belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

B. An issuer of a gift certificate or gift card or who is in bankruptcy shall continue to honor a gift certificate or gift card issued prior to the date of the bankruptcy filing on the grounds that the value of the gift certificate or gift card constitutes trust property of the beneficiary.

C. 1. This section does not alter the terms of a gift certificate or gift card. The terms of a gift certificate or gift card may not make its redemption or other use invalid in the event of a bankruptcy.

2. This section does not require, unless otherwise required by law, the issuer of a gift certificate or gift card to:

a. redeem a gift certificate or gift card for cash,

b. replace a gift certificate or gift card that has been lost or stolen, or

c. maintain a separate account for the funds used to purchase the gift certificate or gift card.

D. 1. This section does not create an interest in favor of the beneficiary of the gift certificate or gift card in any specific property of the issuer;

2. This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificates or gift cards and the issuer, unless otherwise provided by law; and

3. The issuer of a gift certificate or gift card has no obligation to pay interest on the value of the gift certificate or gift card held in trust under this section, unless otherwise provided by law.

Any waiver of the provisions of Title 15 of the Oklahoma Statutes is contrary to public policy, and is void and unenforceable.
Added by Laws 2005, c. 233, § 4, eff. Nov. 1, 2005.

§15-798.1. Exemptions.
For the purposes of this act, the term "gift certificate" or "gift card" shall not include any of the following:
1. Prepaid telephone calling cards that are purchased for retail use;
2. Telephone calling cards that are provided on a promotional basis; or
3. Any prepaid service arrangement.
Added by Laws 2005, c. 233, § 5, eff. Nov. 1, 2005. Amended by Laws 2006, c. 59, § 3, eff. Nov. 1, 2006.
NOTE: Editorially renumbered from § 798 of this title to avoid duplication in numbering.

§15-799. Enforcement of act.
Any violation of the Gift Certificate and Gift Card Disclosure Act shall be enforced pursuant to the provisions of Section 761.1 of Title 15 of the Oklahoma Statutes.
Added by Laws 2005, c. 233, § 6, eff. Nov. 1, 2005.

§15-801. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-802. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-803. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-804. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-805. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-806. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-807. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-808. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-809. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-810. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-811. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-812. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-813. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-814. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-815. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-816. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-817. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-818. Repealed by Laws 2005, c. 364, § 32, eff. Jan. 1, 2006.

§15-820. Frequency and time period of payments to prime contractor - Exemption - Suspension and resumption of work.

A. Bid Projects.

1. On all private construction projects in which a set of plans or specifications or both plans and specifications are issued for bid, the owner shall specify in writing the frequency and time period for payments to the prime contractor. The general specifications and the first page of all bid plans shall include the following, or substantially similar, language:

OWNER SHALL ISSUE PAYMENTS WITH A FREQUENCY OF _____.

OWNER SHALL ISSUE EACH PAYMENT TO THE PRIME CONTRACTOR WITHIN _____ DAYS AFTER RECEIPT OF CONTRACTOR'S BILLING.

Any resulting contract shall include the payment frequency and time period prescribed in the general specifications and bid plans. An architect, engineer, or other entity preparing the plans and specifications for the owner shall not be liable for the failure to include the payment terms on a set of plans or specifications used for bidding purposes.

2. If the owner fails to comply with the provisions of paragraph 1 of this subsection, the following shall be applicable:

a. the owner shall make monthly progress payments, and

b. payments shall be due within twenty-eight (28) calendar days after receipt of billing.

3. The owner may reduce the progress payment as provided for in the contract.

4. Subcontractors shall be paid by the prime contractor within ten (10) calendar days of payment from the owner, or as otherwise agreed to by the parties. Payment may be reduced as provided for in the subcontract.

B. Private Negotiated Projects.

1. The provisions of subsection A of this section shall not be applicable to private negotiated projects.

2. An owner may choose to negotiate a construction contract with a contractor, and may also choose to keep the payment terms of that contract private.

3. If a contractor invites a subcontractor to bid on any portion of a negotiated project, the contractor shall clearly define the contractor's payment term upon issuance of the invitation to bid. Such payment term shall be defined as to the frequency that payments shall be made, and a specific day of the month that the subcontractor shall expect to receive each payment.

4. Any subcontract negotiated pursuant to this subsection shall include the same payment terms as were represented by the prime contractor to the subcontractor prior to the acceptance of the bid of the subcontractor. Payment may be reduced as provided for in the subcontract.

C. Suspension of Work for Bid Projects and Private Negotiated Projects.

1. The prime contractor may suspend work:
   a. when payment has not been received within ten (10) calendar days of the date payment should have been received,
   b. if the prime contractor has complied with the contract, and
   c. if the prime contractor has given the owner ten (10) calendar days written notice of work suspension delivered by certified mail or other verifiable service.

2. Subcontractors may suspend work:
   a. when payment has not been received within ten (10) calendar days of the date payment should have been received,
   b. if the subcontractor has complied with the subcontract, and
   c. if the subcontractor has given the prime contractor ten (10) calendar days written notice of work suspension delivered by certified mail or other verifiable service.

D. Resumption of Work.

No prime contractor or subcontractor shall be required to resume work until:

1. Receipt of full payment of undisputed portions of outstanding billing;

2. The contracted work schedule is extended the number of days of delay; and

3. A change order is issued for the verifiable direct cost of suspension, delay and start-up.

Added by Laws 2010, c. 208, § 1, emerg. eff. May 5, 2010.

§15-821. Unenforceable contract provisions.

A. This act shall not apply to any contract relating to a single-, two-, three-, or four-family dwelling.

B. The following are against this state's public policy and are void and unenforceable:

1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state; and

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that disallows or alters the rights of any contractor or subcontractor to receive and enforce any and all rights under this act.

Added by Laws 2010, c. 208, § 2, emerg. eff. May 5, 2010.

§15-901. Motor vehicles - Repairing under warranty.

A. As used in this section:

1. "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and

2. "Motor vehicle" means any motor-driven vehicle required to be registered under the Oklahoma Motor Vehicle License and Registration Act, excluding vehicles above ten thousand (10,000) pounds gross vehicle weight and the living facilities of motor homes.

B. For the purposes of this act, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity, directly in writing, to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

C. If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either accept a return of the vehicle from the consumer and refund to the consumer the full purchase price including all taxes, license, registration fees and all similar governmental fees, excluding interest, less a reasonable allowance for the consumer's use of the vehicle or replace the motor vehicle with a comparable new model acceptable to the consumer. If a comparable model vehicle cannot be agreed upon, the purchase price shall be refunded less a

reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator one hundred twenty thousand (120,000) miles and having as the numerator the miles directly attributable to use by the consumer beyond fifteen thousand (15,000) miles. It shall be an affirmative defense to any claim under this act:

1. That an alleged nonconformity does not substantially impair such use and value; or

2. That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle.

In no event shall the presumption described in this subsection apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged.

D. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:

1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist; or

2. The vehicle is out of service by reason of repair for a cumulative total of thirty (30) business days during such term or during such period, whichever is the earlier date.

The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

E. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

F. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, the provisions of subsection C of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

G. The Oklahoma Attorney General shall prepare and place on the Attorney General's website a written statement explaining the rights of a purchaser under this law. The dealer shall provide to the purchaser at the time of the original purchase of a new motor vehicle the written statement prepared by the Attorney General.

H. Vehicles returned pursuant to the provisions of this act may not be resold in this state unless:

1. The manufacturer provides the same express warranty the manufacturer provided the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; or

2. The manufacturer, through the licensed dealer, provides the consumer with a written statement on a separate piece of paper that clearly discloses the reason or reasons the vehicle was reacquired by the manufacturer.

I. Notwithstanding the provisions of subsection H of this section, returned vehicles shall not be resold if a new motor vehicle has been returned pursuant to the provisions of this act or a similar statute in another state because of nonconformity resulting in a complete failure of the braking or steering system likely to cause death or serious bodily injury if the vehicle is driven.

J. In any civil action pursuant to this section wherein the consumer is the prevailing party in the civil action, the consumer shall recover all costs and reasonable attorney fees as determined by the court.

Added by Laws 1985, c. 279, § 1, eff. Nov. 1, 1985. Amended by Laws 2009, c. 279, § 2, eff. Nov. 1, 2009.

§15-901.1. Lemon Law Buyback certificate of title notation.

Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to this section or Section 901 of this title shall:

1. Cause the vehicle to be retitled in the name of the manufacturer; and

2. Request the Oklahoma Tax Commission to brand the certificate of title with the notation "Lemon Law Buyback". Any branding of a title as a "Lemon Law Buyback" shall remain permanently on the title.

Added by Laws 2009, c. 279, § 3, eff. Nov. 1, 2009. Amended by Laws 2019, c. 162, § 1, eff. Nov. 1, 2019.

§15-902. Installation or reinstallation of object in lieu of airbag - Violation - Penalty.

Any person who knowingly, without the owner's written consent, installs or reinstalls any object in lieu of an airbag that was designed in accordance with federal safety regulations for the make, model, and year of vehicle, as part of a vehicle inflatable restraint system, is guilty of a misdemeanor punishable by a fine of up to Five Thousand Dollars ($5,000.00) per offense, or by confinement in the county jail for up to one (1) year, or by both fine and confinement.

Added by Laws 2002, c. 320, § 1, eff. July 1, 2002.

§15-910. Short title.

This act shall be known and may be cited as the "Defective Assistive Device Act".

Added by Laws 1996, c. 31, § 1, eff. Nov. 1, 1996.

§15-910.1. Definitions.

As used in the Defective Assistive Device Act:

1. "Assistive device" means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity which includes, but is not limited to:

a. manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual,

b. hearing aids, telecommunications devices for the deaf (TDD), assistive listening devices, and other aids that enhance an individual's ability to hear,

c. voice-synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired individual's ability to communicate, and

d. any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver;

2. "Assistive device dealer" means a person who is in the business of selling assistive devices;

3. "Assistive device lessor" means a person who leases an assistive device to a consumer, or who holds the lessor's rights under a written lease;

4. "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive device;

5. "Consumer" means any of the following:

a. the purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale,

b. a person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device,

c. a person who may enforce the warranty, or

d. a person who leases an assistive device from an assistive device lessor under a written lease;

6. "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public;

7. "Early termination cost" means any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to the Defective Assistive Device Act. Early termination cost includes a penalty for prepayment under a finance arrangement;

8. "Early termination saving" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to the Defective Assistive Device Act. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination;

9. "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer;

10. "Nonconformity" means a condition or defect that substantially impairs the value or safety of an assistive device, and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by a consumer; and

11. "Reasonable attempt to repair" means within the terms of an express warranty applicable to a new assistive device:

a. any nonconformity within the warranty that is either subject to repair by the manufacturer, assistive device lessor or any of the manufacturer's authorized assistive device dealers for at least four times, and a nonconformity continues, or

b. the assistive device is out of service for an aggregate of at least thirty (30) cumulative days because of warranty nonconformity.

Added by Laws 1996, c. 31, § 2, eff. Nov. 1, 1996.

§15-910.2. Manufacturer warranty - Repairs.

A. A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one (1) year

after first delivery of the assistive device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one (1) year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the value of the assistive device to the consumer.

B. If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one (1) year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

C. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set forth under Section 4 of this act.

Added by Laws 1996, c. 31, § 3, eff. Nov. 1, 1996.

§15-910.3. Required actions of manufacturer after failure to repair - Refunds.

A. If, after a reasonable attempt to repair, the nonconformity is not repaired, then at the direction of a consumer described under subparagraph a, b or c of paragraph 5 of Section 2 of this act, the manufacturer shall do one of the following:

1. Accept return of the assistive device and replace the assistive device with a comparable new assistive device and refund any collateral costs; or

2. Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer.

B. 1. With respect to a consumer described under subparagraph d of paragraph 5 of Section 2 of this act, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

2. The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value less the assistive device lessor's early termination savings.

3. A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

Added by Laws 1996, c. 31, § 4, eff. Nov. 1, 1996.

§15-910.4. Receipt of new assistive device or refund - Actions required of consumer - Sale or lease of returned assistive devices.

A. To receive a comparable new assistive device or a refund due under Section 4 of this act, a consumer shall offer to the manufacturer of the assistive device having the nonconformity to transfer possession of that assistive device to that manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable assistive device or refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

B. To receive a refund due under subsection B of Section 4 of this act, a consumer described under subparagraph d of paragraph 5 of Section 2 of this act shall offer to return the assistive device having the nonconformity to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive device having the nonconformity.

C. To receive a refund due under subsection B of Section 4 of this act, an assistive device lessor shall offer to transfer possession of the assistive device having the nonconformity to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

D. No person shall enforce the lease against the consumer after the consumer receives a refund due under subsection B of Section 4 of this act.

E. No assistive device returned by a consumer or assistive device lessor in this state, or by a consumer or assistive device lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.
Added by Laws 1996, c. 31, § 5, eff. Nov. 1, 1996.

§15-910.5. Right to alternate arbitration - Construction of act - Waiver - Actions for damages.

A. Each consumer shall have the option of submitting any dispute arising under the Defective Assistive Device Act to alternate arbitration, and all manufacturers shall submit to such alternate arbitration pursuant to the Dispute Resolution Act, Section 1801 et seq. of Title 12 of the Oklahoma Statutes.

B. The Defective Assistive Device Act shall not be construed to limit rights or remedies available to a consumer under any other law.

C. Any waiver by a consumer of rights under this section is void.

D. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the Defective Assistive Device Act. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.
Added by Laws 1996, c. 31, § 6, eff. Nov. 1, 1996.

§15-951. Short title.

This act shall be known and may be cited as the Aftermarket Crash Parts Regulation Act.
Added by Laws 1991, c. 161, § 1, eff. Sept. 1, 1991.

§15-952. Purpose.

The purpose of the Aftermarket Crash Parts Regulation Act is to regulate the use of aftermarket crash parts by:

1. requiring disclosure when any use is proposed of an aftermarket, non-original equipment manufacturer's crash part; and

2. requiring that the manufacturers of such aftermarket crash parts be identified.
Added by Laws 1991, c. 161, § 2, eff. Sept. 1, 1991.

§15-953. Definitions.

For purposes of the Aftermarket Crash Parts Regulation Act:

1. "Insurer" means an insurance company authorized to do business in our state and any person authorized to represent the insurer with respect to a claim;

2. "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels;

3. "Non-original equipment manufacturer aftermarket crash part" means aftermarket crash parts not made for or by the manufacturer of the motor vehicle;

4. "Repair facility" means any motor vehicle dealer, garage, body shop or other commercial entity which undertakes the repair or replacement of those parts that generally constitute the exterior of a motor vehicle; and

5. "Installer" means any person who actually does the work of replacing or repairing parts of a motor vehicle.

Added by Laws 1991, c. 161, § 3, eff. Sept. 1, 1991.

§15-954. Manufacturer's logo or name - Affixing to any aftermarket crash part.

Any aftermarket crash part supplied by a non-original equipment manufacturer for use in this state after September 1, 1991, shall have affixed thereto or inscribed thereon the logo or name of its manufacturer. Such manufacturer's logo or name shall be visible after installation whenever practicable.

Added by Laws 1991, c. 161, § 4, eff. Sept. 1, 1991.

§15-955. Use of non-original equipment manufacturer aftermarket crash parts - Identification of parts - Disclosure to insured.

No insurer shall specify the use of non-original equipment manufacturer aftermarket crash parts in the repair of an insured's motor vehicle, nor shall a repair facility or installer use non-original equipment manufacturer aftermarket crash parts to repair a vehicle, unless the consumer is advised in writing. In all instances where non-original equipment manufacturer aftermarket crash parts are intended for use by an insurer:

1. the written estimate shall clearly identify each such part; and

2. a disclosure document containing substantially the following information in ten-point type or larger type shall appear on or be attached to the insured's copy of the estimate: "This estimate has been prepared based on the use of crash parts supplied by a source other than the manufacturer of your motor vehicle. Warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle."

Added by Laws 1991, c. 161, § 5, eff. Sept. 1, 1991.

§15-956. Violations - Enforcement.

Any violation of this act shall be subject to and enforced through the unfair trade practices provisions of Article 12 of Title 36 of the Oklahoma Statutes.
Added by Laws 1991, c. 161, § 6, eff. Sept. 1, 1991.

§15-960. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-961. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-962. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-963. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-964. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-965. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-966. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-967. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-968. Repealed by Laws 2000, c. 372, § 21, eff. Nov. 1, 2000.

§15-1001. Short title.

SHORT TITLE

This act may be cited as the "Uniform Statutory Form Power of Attorney Act".
Added by Laws 1998, c 420, § 1, eff. Nov. 1, 1998.

§15-1002. Purpose.

The purposes of this act are to simplify the creation of a power of attorney and, when a form substantially similar to the form set forth in this act is utilized, to assure third parties that they may rely in good faith on the acts of the agent within the scope of the power of attorney. The form set forth in this act is not exclusive, however, and other forms of power of attorney may be used.
Added by Laws 1998, c. 420, § 2, eff. Nov. 1, 1998.

§15-1003. Statutory form for power of attorney.

STATUTORY FORM FOR POWER OF ATTORNEY

A. The following statutory form of power of attorney is legally sufficient:

STATUTORY POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE

MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____ (insert your name and address) appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

_____ (A) Real property transactions.

_____ (B) Tangible personal property transactions.

_____ (C) Stock and bond transactions.

_____ (D) Commodity and option transactions.

(E) Banking and other financial institution transactions.

_____ (F) Business operating transactions.

_____ (G) Insurance and annuity transactions.

(H) Estate, trust, and other beneficiary transactions.

(I) Claims and litigation.

_____ (J) Personal and family maintenance.

_____ (K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.

_____ (L) Retirement plan transactions.

_____ (M) Tax matters.

_____ (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____

_____

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_____

(Attach additional pages if needed.)

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, 19__

_____
(Your Signature)

_____
(Your Social Security Number)

State of _____
(County) of _____

This document was acknowledged before me on
_____ (Date) by _____
(Name of principal)

_____
(Signature of notarial officer)

(Seal, if any) _____
(Title and Rank)

My commission expires:_____

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

B. A statutory power of attorney is legally sufficient under this act, if the wording of the form complies substantially with subsection A of this section, the form is properly completed, and the signature of the principal is acknowledged.

C. If the line in front of (N) of the form under subsection A of this section is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

Added by Laws 1998, c. 420, § 3, eff. Nov. 1, 1998.

§15-1004. Durability of power of attorney.

DURABILITY OF POWER OF ATTORNEY

A power of attorney legally sufficient under this act is durable to the extent that durable powers are permitted by other laws of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent", showing the intent of the principal

that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.
Added by Laws 1998, c. 420, § 4, eff. Nov. 1, 1998.

§15-1005. Construction of power generally.

CONSTRUCTION OF POWER GENERALLY

By executing a statutory power of attorney with respect to a subject listed in subsection A of Section 1 of this act, the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:

1. Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and to conserve, invest, disburse, or use anything so received for the purposes intended;

2. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

3. Execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

4. Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

5. Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

6. Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

7. Keep appropriate records of each transaction, including an accounting of receipts and disbursements;

8. Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

9. Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

10. In general, do any other lawful act with respect to the subject.

Added by Laws 1998, c. 420, § 5, eff. Nov. 1, 1998.

§15-1006. Construction of power relating to real property transactions.

CONSTRUCTION OF POWER RELATING TO REAL PROPERTY TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to:

1. Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property;

2. Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right incident to real property;

3. Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted;

4. Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including:

a. insuring against a casualty, liability, or loss,

b. obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise,

c. paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them, and

d. purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

5. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

6. Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:

a. selling or otherwise disposing of them,

b. exercising or selling an option, conversion, or similar right with respect to them, and

c. voting them in person or by proxy;

7. Change the form of title of an interest in or right incident to real property; and

8. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

Added by Laws 1998, c. 420, § 6, eff. Nov. 1, 1998.

§15-1007. Construction of power relating to tangible personal property transactions.

CONSTRUCTION OF POWER RELATING TO
TANGIBLE PERSONAL PROPERTY TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to tangible personal property transactions empowers the agent to:

1. Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

2. Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

3. Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

4. Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

a. insuring against casualty, liability, or loss,
b. obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise,
c. paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments,
d. moving from place to place,
e. storing for hire or on a gratuitous bailment, and
f. using, altering, and making repairs or alterations.

Added by Laws 1998, c. 420, § 7, eff. Nov. 1, 1998.

§15-1008. Construction of power relating to stock and bond transactions.

CONSTRUCTION OF POWER RELATING TO STOCK AND BOND TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Added by Laws 1998, c. 420, § 8, eff. Nov. 1, 1998.

§15-1009. Construction of power relating to commodity and option transactions.

CONSTRUCTION OF POWER RELATING TO COMMODITY AND OPTION TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify, and terminate option accounts with a broker. Added by Laws 1998, c. 420, § 9, eff. Nov. 1, 1998.

§15-1010. Construction of power relating to banking and other financial institution transactions.

CONSTRUCTION OF POWER RELATING TO BANKING AND OTHER FINANCIAL INSTITUTION TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to banking and other financial institution transactions empowers the agent to:

1. Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

2. Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

3. Hire a safe deposit box or space in a vault;

4. Contract to procure other services available from a financial institution as the agent considers desirable;

5. Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

6. Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them;

7. Enter a safe deposit box or vault and withdraw or add to the contents;

8. Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

9. Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, accept a draft drawn by a person upon the principal, and pay it when due;

10. Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

11. Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit; and

12. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.
Added by Laws 1998, c. 420, § 10, eff. Nov. 1, 1998.

§15-1011. Construction of power relating to business operating transactions.

CONSTRUCTION OF POWER RELATING TO BUSINESS OPERATING TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to business operating transactions empowers the agent to:

1. Operate, buy, sell, enlarge, reduce, and terminate a business interest;

2. To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:

a. perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner,

b. enforce the terms of a partnership agreement by litigation or otherwise, and

c. defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;

3. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;

4. With respect to a business owned solely by the principal:

a. continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney,

b. determine:

(1) the location of its operation,

(2) the nature and extent of its business,

(3) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation,

(4) the amount and types of insurance carried,

(5) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees,

c. change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business, and

d. demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;

5. Put additional capital into a business in which the principal has an interest;

6. Join in a plan of reorganization, consolidation, or merger of the business;

7. Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

8. Establish the value of a business under a buy-out agreement to which the principal is a party;

9. Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments; and

10. Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Added by Laws 1998, c. 420, § 11, eff. Nov. 1, 1998.

§15-1012. Construction of power relating to insurance transactions.

CONSTRUCTION OF POWER RELATING TO INSURANCE TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to insurance and annuity transactions empowers the agent to:

1. Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

2. Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment;

3. Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

4. Designate the beneficiary of the contract, but an agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

5. Apply for and receive a loan on the security of the contract of insurance or annuity;

6. Surrender and receive the cash surrender value;

7. Exercise an election;

8. Change the manner of paying premiums;

9. Change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;

10. Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by paragraph 4 of this section;

11. Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

12. Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

13. Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Added by Laws 1998, c. 420, § 12, eff. Nov. 1, 1998.

§15-1013. Construction of power relating to estate, trust, and other beneficiary transactions.

CONSTRUCTION OF POWER RELATING TO ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to estate, trust, and other beneficiary transactions empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

1. Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

2. Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

3. Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of

trust, or other instrument or transaction affecting the interest of the principal;

4. Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

5. Conserve, invest, disburse, and use anything received for an authorized purpose; and

6. Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

Added by Laws 1998, c. 420, § 13, eff. Nov. 1, 1998.

§15-1014. Construction of power relating to claims and litigation.

CONSTRUCTION OF POWER RELATING TO CLAIMS AND LITIGATION

In a statutory power of attorney, the language with respect to claims and litigation empowers the agent to:

1. Assert and prosecute before a court or administrative agency a claim, a cause of action, counterclaim, offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

2. Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

3. In connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

4. In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;

5. Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

6. Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

7. Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning

the principal or some other person, with respect to a reorganization proceeding, or a receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value; and

8. Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money, or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Added by Laws 1998, c. 420, § 14, eff. Nov. 1, 1998.

§15-1015. Construction of power relating to personal and family maintenance.

CONSTRUCTION OF POWER RELATING TO PERSONAL AND FAMILY MAINTENANCE

In a statutory power of attorney, the language granting power with respect to personal and family maintenance empowers the agent to:

1. Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

2. Provide for the individuals described in paragraph 1 of this section normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs;

3. Pay for the individuals described in paragraph 1 of this section necessary medical, dental, and surgical care, hospitalization, and custodial care;

4. Continue any provision made by the principal, for the individuals described in paragraph 1 of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

5. Maintain or open charge accounts for the convenience of the individuals described in paragraph 1 of this section and open new accounts the agent considers desirable to accomplish a lawful purpose; and

6. Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

Added by Laws 1998, c. 420, § 15, eff. Nov. 1, 1998.

§15-1016. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or military service.

CONSTRUCTION OF POWER RELATING TO BENEFITS FROM

SOCIAL SECURITY, MEDICARE, MEDICAID, OR OTHER
GOVERNMENTAL PROGRAMS OR MILITARY SERVICE

In a statutory power of attorney, the language granting power with respect to benefits from Social Security, Medicare, Medicaid or other governmental programs, or civil or military service empowers the agent to:

1. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in paragraph 1 of Section 15 of this act, and for shipment of their household effects;

2. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

3. Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

4. Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

5. Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

Added by Laws 1998, c. 420, § 16, eff. Nov. 1, 1998.

§15-1017. Construction of power relating to retirement plan transactions.

CONSTRUCTION OF POWER RELATING TO RETIREMENT PLAN TRANSACTIONS

In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

1. Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

2. Make voluntary contributions to those plans;

3. Exercise the investment powers available under any self-directed retirement plan;

4. Make "rollovers" of plan benefits into other retirement plans;

5. If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

6. Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

Added by Laws 1998, c. 420, § 17, eff. Nov. 1, 1998.

§15-1018. Construction of power relating to tax matters.

CONSTRUCTION OF POWER RELATING TO TAX MATTERS

In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

1. Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code Section 2032A or any successor section), closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five (25) tax years;

2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

3. Exercise any election available to the principal under federal, state, local, or foreign tax law; and

4. Act for the principal in all tax matters for all periods before the Internal Revenue Service, and any other taxing authority.

Added by Laws 1998, c. 420, § 18, eff. Nov. 1, 1998.

§15-1019. Existing interests; foreign interests.

EXISTING INTERESTS; FOREIGN INTERESTS

The powers described in Sections 5 through 18 of this act are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state, and whether or not the powers are exercised or the power of attorney is executed in this state.

Added by Laws 1998, c. 420, § 19, eff. Nov. 1, 1998.

§15-1020. Uniformity of application and construction.

UNIFORMITY OF APPLICATION AND CONSTRUCTION

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Added by Laws 1998, c. 420, § 20, eff. Nov. 1, 1998.

§15-1021. Repealed by Laws 2014, c. 19, § 1, eff. Nov. 1, 2014.

§15-1022. Repealed by Laws 2014, c. 19, § 1, eff. Nov. 1, 2014.

§15-1023. Repealed by Laws 2014, c. 19, § 1, eff. Nov. 1, 2014.

§15-1024. Repealed by Laws 2014, c. 19, § 1, eff. Nov. 1, 2014.