

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 197
94TH GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy April 18, 2007 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 197 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0507L.09C

AN ACT

To repeal sections 407.730, 407.732, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof twenty-four new sections relating to service contracts, with an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.730, 407.732, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 385.200, 385.202, 385.204, 385.206, 385.208, 385.210, 385.212, 385.214, 385.216, 385.218, 385.220, 385.300, 385.302, 385.304, 385.306, 385.308, 385.310, 385.312, 385.314, 385.316, 385.318, 385.320, 407.730, and 407.732, to read as follows:

385.200. As used in sections 385.200 to 385.220, the following terms mean:

(1) "Administrator", the person other than a provider who is responsible for the administration of the service contracts or the service contracts plan or for any filings required by sections 385.200 to 385.220;

(2) "Consumer", a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

- 8 (3) "Dealers", any motor vehicle dealer or boat dealer licensed or required to be
9 licensed under the provisions of sections 301.550 to 301.573, RSMo;
- 10 (4) "Director", the director of the department of insurance, financial institutions
11 and professional registration;
- 12 (5) "Maintenance agreement", a contract of limited duration that provides for
13 scheduled maintenance only;
- 14 (6) "Manufacturer", any of the following:
- 15 (a) A person who manufactures or produces the property and sells the property
16 under the person's own name or label;
- 17 (b) A subsidiary of the person who manufactures or produces the property;
- 18 (c) A person who owns one hundred percent of the entity that manufactures or
19 produces the property;
- 20 (d) A person that does not manufacture or produce the property, but the property
21 is sold under its trade name label;
- 22 (e) A person who manufactures or produces the property and the property is sold
23 under the trade name or label of another person;
- 24 (f) A person who does not manufacture or produce the property but, under a
25 written contract, licenses the use of its trade name or label to another person who sells the
26 property under the licensor's trade name or label;
- 27 (7) "Mechanical breakdown insurance", a policy, contract, or agreement issued by
28 an authorized insurer who provides for the repair, replacement, or maintenance of a motor
29 vehicle or indemnification for repair, replacement, or service, for the operational or
30 structural failure of a motor vehicle due to a defect in materials or workmanship or to
31 normal wear and tear;
- 32 (8) "Motor vehicle extended service contract" or "service contract", a contract or
33 agreement for a separately stated consideration or for a specific duration to perform the
34 repair, replacement, or maintenance of a motor vehicle or indemnification for repair,
35 replacement, or maintenance, for the operational or structural failure due to a defect in
36 materials, workmanship, or normal wear and tear, with or without additional provision
37 for incidental payment of indemnity under limited circumstances, including but not limited
38 to towing, rental, and emergency road service, but does not include mechanical breakdown
39 insurance or maintenance agreements;
- 40 (9) "Nonoriginal manufacturer's parts", replacement parts not made for or by the
41 original manufacturer of the property, commonly referred to as after market parts;

42 (10) "Person", an individual, partnership, corporation, incorporated or
43 unincorporated association, joint stock company, reciprocal, syndicate, or any similar
44 entity or combination of entities acting in concert;

45 (11) "Premium", the consideration paid to an insurer for a reimbursement
46 insurance policy;

47 (12) "Provider", a person who is contractually obligated to the service contract
48 holder under the terms of a motor vehicle extended service contract;

49 (13) "Provider fee", the consideration paid for a motor vehicle extended service
50 contract by a service contract holder;

51 (14) "Reimbursement insurance policy", a policy of insurance issued to a provider
52 and under which the insurer agrees, for the benefit of the motor vehicle extended service
53 contract holders, to discharge all of the obligations and liabilities of the provider under the
54 terms of the motor vehicle extended service contracts in the event of nonperformance by
55 the provider. All obligations and liabilities include, but are not limited to, failure of the
56 provider to perform under the motor vehicle extended service contract and the return of
57 the unearned provider fee in the event of the provider's unwillingness or inability to
58 reimburse the unearned provider fee in the event of termination of a motor vehicle
59 extended service contract;

60 (15) "Service contract holder" or "contract holder", a person who is the purchaser
61 or holder of a motor vehicle extended service contract;

62 (16) "Warranty", a warranty made solely by the manufacturer, importer, or seller
63 of property or services without charge, that is not negotiated or separated from the sale of
64 the product and is incidental to the sale of the product, that guarantees indemnity for
65 defective parts, mechanical or electrical breakdown, labor, or other remedial measures,
66 such as repair or replacement of the property or repetition of services.

385.202. 1. Motor vehicle extended service contracts shall not be issued, sold, or
2 offered for sale in this state unless the provider or its designee has:

3 (1) Provided a receipt for the purchase of the motor vehicle extended service
4 contract to the contract holder at the date of purchase;

5 (2) Provided a copy of the motor vehicle extended service contract to the service
6 contract holder within a reasonable period of time from the date of purchase; and

7 (3) Complied with the provisions of sections 385.200 to 385.220.

8 2. All providers of motor vehicle extended service contracts sold in this state shall
9 file a registration with the director on a form, at a fee and at a frequency prescribed by the
10 director.

11 **3. In order to assure the faithful performance of a provider's obligations to its**
12 **contract holders, each provider who is contractually obligated to provide service under a**
13 **motor vehicle extended service contract shall:**

14 **(1) Insure all motor vehicle extended service contracts under a reimbursement**
15 **insurance policy issued by an insurer authorized to transact insurance in this state; or**

16 **(2) (a) Maintain a funded reserve account for its obligation under its contracts**
17 **issued and outstanding in this state. The reserves shall not be less than forty percent of**
18 **gross consideration received, less claims paid, on the sale of the motor vehicle extended**
19 **service contract for all in-force contracts. The reserve account shall be subject to**
20 **examination and review by the director; and**

21 **(b) Place in trust with the director a financial security deposit, having a value of not**
22 **less than five percent of the gross consideration received, less claims paid, on the sale of the**
23 **motor vehicle extended service contract for all motor vehicle extended service contracts**
24 **issued and in force, but not less than twenty-five thousand dollars, consisting of one of the**
25 **following:**

26 **a. A surety bond issued by an authorized surety;**

27 **b. Securities of the type eligible for deposit by authorized insurers in this state;**

28 **c. Cash;**

29 **d. A letter of credit issued by a qualified financial institution; or**

30 **e. Another form of security prescribed by regulations issued by the director; or**

31 **(3) (a) Maintain a net worth of one hundred million dollars; and**

32 **(b) Upon request, provide the director with a copy of the provider's or, if the**
33 **provider's financial statements are consolidated with those of its parent company, the**
34 **provider's parent company's most recent Form 10-K filed with the Securities and**
35 **Exchange Commission (SEC) within the last calendar year, or if the company does not file**
36 **with the SEC, a copy of the company's audited financial statements, which shows a net**
37 **worth of the provider or its parent company of at least one hundred million dollars. If the**
38 **provider's parent company's Form 10-K or audited financial statements are filed to meet**
39 **the provider's financial stability requirement, then the parent company shall agree to**
40 **guarantee the obligations of the obligor relating to motor vehicle extended service contracts**
41 **sold by the provider in this state.**

42 **4. Provider fees collected on motor vehicle extended service contracts shall not be**
43 **subject to premium taxes. Premiums for reimbursement insurance policies shall be subject**
44 **to applicable premium taxes.**

45 **5. Except for the registration requirement in subsection 2 of this section, persons**
46 **marketing, selling, or offering to sell motor vehicle extended service contracts for providers**

47 that comply with sections 385.200 to 385.220 are exempt from this state's licensing
48 requirements.

49 6. Providers complying with the provisions of sections 385.200 to 385.220 are not
50 required to comply with other provisions of chapter 374 or 375, RSMo, or any other
51 provisions governing insurance companies, except as specifically provided.

385.204. Reimbursement insurance policies insuring motor vehicle extended service
2 contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon
3 failure of the provider to perform under the contract, such as failure to return the
4 unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider
5 any sums the provider is legally obligated to pay or shall provide the service for which the
6 provider is legally obligated to perform according to the provider's contractual obligations
7 under the motor vehicle extended service contracts issued or sold by the provider.

385.206. 1. No person shall directly sell, offer for sale, or solicit the sale of a motor
2 vehicle extended service contract to a consumer, other than the following:

3 (1) A dealer marketing or selling a motor vehicle extended service contract insured
4 under a reimbursement insurance policy;

5 (2) A manufacturer of motor vehicles, as defined in section 301.010, RSMo,
6 marketing or selling a motor vehicle extended service contract;

7 (3) A federally insured depository institution marketing or selling a motor vehicle
8 extended service contract;

9 (4) A lender licensed and defined under sections 367.100 to 367.215, RSMo,
10 marketing or selling a motor vehicle extended service contract; or

11 (5) An administrator, provider, manufacturer, or person working in concert with
12 an administrator, provider, or manufacturer marketing or selling a motor vehicle extended
13 service contract demonstrating financial responsibility as set forth in section 385.202.

14 2. No administrator or provider shall use a dealer as a fronting company, and no
15 dealer shall act as a fronting company. For purposes of this subsection, "fronting
16 company" means a dealer that authorizes a third-party administrator or provider to use
17 its name or business to evade or circumvent the provisions of subsection 1 of this section.

18 3. Motor vehicle extended service contracts issued, sold, or offered for sale in this
19 state shall be written in clear, understandable language, and the entire contract shall be
20 printed or typed in easy-to-read type and conspicuously disclose the requirements in this
21 section, as applicable.

22 4. Motor vehicle extended service contracts insured under a reimbursement
23 insurance policy under subsection 3 of section 385.202 shall contain a statement in
24 substantially the following form: "Obligations of the provider under this service contract

25 are guaranteed under a service contract reimbursement insurance policy. If the provider
26 fails to pay or provide service on a claim within sixty days after proof of loss has been filed,
27 the contract holder is entitled to make a claim directly against the insurance company."
28 A claim against the provider also shall include a claim for return of the unearned provider
29 fee. The motor vehicle extended service contract also shall state conspicuously the name
30 and address of the insurer.

31 5. Motor vehicle extended service contracts not insured under a reimbursement
32 insurance policy pursuant to subsection 3 of section 385.202 shall contain a statement in
33 substantially the following form: "Obligations of the provider under this service contract
34 are backed only by the full faith and credit of the provider (issuer) and are not guaranteed
35 under a service contract reimbursement insurance policy." A claim against the provider
36 also shall include a claim for return of the unearned provider fee. The motor vehicle
37 extended service contract also shall state conspicuously the name and address of the
38 provider.

39 6. Motor vehicle extended service contracts shall identify any administrator, the
40 provider obligated to perform the service under the contract, the motor vehicle extended
41 service contract seller, and the service contract holder to the extent that the name and
42 address of the service contract holder has been furnished by the service contract holder.

43 7. Motor vehicle extended service contracts shall state conspicuously the total
44 purchase price and the terms under which the motor vehicle extended service contract is
45 sold. The purchase price is not required to be preprinted on the motor vehicle extended
46 service contract and may be negotiated at the time of sale with the service contract holder.

47 8. If prior approval of repair work is required, the motor vehicle extended service
48 contracts shall state conspicuously the procedure for obtaining prior approval and for
49 making a claim, including a toll-free telephone number for claim service and a procedure
50 for obtaining emergency repairs performed outside of normal business hours.

51 9. Motor vehicle extended service contracts shall state conspicuously the existence
52 of any deductible amount.

53 10. Motor vehicle extended service contracts shall specify the merchandise and
54 services to be provided and any limitations, exceptions, and exclusions.

55 11. Motor vehicle extended service contracts shall state the conditions upon which
56 the use of nonoriginal manufacturer's parts, or substitute service, may be allowed.
57 Conditions stated shall comply with applicable state and federal laws.

58 12. Motor vehicle extended service contracts shall state any terms, restrictions, or
59 conditions governing the transferability of the motor vehicle extended service contract.

60 **13. Motor vehicle extended service contracts shall state the terms, restrictions, or**
61 **conditions governing termination of the service contract by the service contract holder.**
62 **The provider of the motor vehicle extended service contract shall mail a written notice to**
63 **the contract holder within fifteen days of the date of termination.**

64 **14. Motor vehicle extended service contracts shall require every provider to permit**
65 **the service contract holder to return the contract within at least twenty business days of**
66 **mailing date of the motor vehicle extended service contract or within at least ten days if the**
67 **service contract is delivered at the time of sale or within a longer time period permitted**
68 **under the contract. If no claim has been made under the contract, the contract is void and**
69 **the provider shall refund to the contract holder the full purchase price of the contract. A**
70 **ten percent penalty per month shall be added to a refund that is not paid within thirty days**
71 **of return of the contract to the provider. The applicable free-look time periods on service**
72 **contracts shall apply only to the original service contract purchaser.**

73 **15. Motor vehicle extended service contracts shall set forth all of the obligations and**
74 **duties of the service contract holder, such as the duty to protect against any further**
75 **damage and the requirement for certain service and maintenance.**

76 **16. Motor vehicle extended service contracts shall state clearly whether or not the**
77 **service contract provides for or excludes consequential damages or preexisting conditions.**

385.208. 1. A provider shall not use in its name the words insurance, casualty,
2 **guaranty, surety, mutual, or any other words descriptive of the insurance, casualty,**
3 **guaranty, or surety business, nor shall such provider use a name deceptively similar to the**
4 **name or description of any insurance or surety corporation, or any other provider. This**
5 **section shall not apply to a company that was using any of the prohibited language in its**
6 **name prior to August 28, 2007. However, a company using the prohibited language in its**
7 **name shall disclose conspicuously in its motor vehicle extended service contract the**
8 **following statement: "This agreement is not an insurance contract."**

9 **2. A provider or its representative shall not in its motor vehicle extended service**
10 **contracts or literature make, permit, or cause to be made any false or misleading**
11 **statement, or deliberately omit any material statement that would be considered misleading**
12 **if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle**
13 **extended service contract.**

14 **3. A person, such as a bank, savings and loan association, lending institution,**
15 **manufacturer or seller of any product, shall not require the purchase of a service contract**
16 **as a condition of a loan or a condition for the sale of any property.**

2 **385.210. 1. An administrator, provider, or other intermediary shall keep accurate**
3 **accounts, books, and records concerning transactions regulated by sections 385.200 to**
4 **385.220.**

5 **2. An administrator's, provider's, or other intermediary's accounts, books, and**
6 **records shall include:**

7 **(1) Copies of each type of motor vehicle extended service contract issued;**

8 **(2) The name and address of each service holder to the extent that the name and**
9 **address have been furnished by the service contract holder;**

10 **(3) A list of the provider locations where motor vehicle extended service contracts**
11 **are marketed, sold, or offered for sale; and**

12 **(4) Claims files that shall contain at least the dates, amounts, and description of all**
13 **receipts, claims, and expenditures related to the motor vehicle extended service contracts.**

14 **3. Except as provided in this section, an administrator shall retain all records**
15 **pertaining to each motor vehicle extended service contract holder for at least three years**
16 **after the specified period of coverage has expired.**

17 **4. An administrator, provider, or other intermediary may keep all records required**
18 **under sections 385.200 to 385.220 on a computer disk or other similar technology. If an**
19 **administrator, provider, or other intermediary maintains records in other than hard copy,**
20 **records shall be accessible from a computer terminal available to the director and be**
21 **capable of duplication to legible hard copy.**

22 **5. An administrator, provider, or other intermediary discontinuing business in this**
23 **state shall maintain its records until it furnishes the director satisfactory proof that it has**
24 **discharged all obligations to contract holders in this state.**

25 **6. An administrator, provider, or other intermediary shall make all accounts,**
26 **books, and records concerning transactions regulated pursuant to sections 385.200 to**
27 **385.220 or other pertinent laws available to the director upon request.**

28 **385.212. As applicable, an insurer that issued a reimbursement insurance policy**
29 **shall not terminate the policy until a notice of termination, in a form and time frame**
30 **prescribed by the director, has been mailed or delivered to the director. The termination**
31 **of a reimbursement insurance policy shall not reduce the issuer's responsibility for motor**
32 **vehicle extended service contracts issued by providers prior to the date of the termination.**

33 **385.214. 1. Providers are considered to be the agent of the insurer that issued the**
34 **reimbursement insurance policy. In cases where a provider is acting as an administrator**
35 **and enlists other providers, the provider acting as the administrator shall notify the insurer**
36 **of the existence and identities of the other providers.**

5 **2. The provisions of sections 385.200 to 385.220 shall not prevent or limit the right**
6 **of an insurer that issued a reimbursement insurance policy to seek indemnification or**
7 **subrogation against a provider if the insurer pays or is obligated to pay the service contract**
8 **holder sums that the provider was obligated to pay under the provisions of the motor**
9 **vehicle extended service contract or under a contractual agreement.**

385.216. 1. The director may conduct investigations or examinations of providers,
2 **administrators, insurers, or other persons to enforce the provisions of sections 385.200 to**
3 **385.220 and protect service contract holders in this state.**

4 **2. If the director determines that a person has engaged, is engaging, or is about to**
5 **engage in a violation of sections 385.200 to 385.220 or a rule adopted or order issued**
6 **pursuant thereto, or that a person has materially aided, is materially aiding, or is about to**
7 **materially aid an act, practice, omission or course of business constituting a violation of**
8 **sections 385.200 to 385.220 or a rule adopted or order issued pursuant thereto, the director**
9 **may issue such administrative orders as authorized under section 374.046, RSMo. A**
10 **violation of this section is a level two violation under section 374.049, RSMo.**

11 **3. If the director believes that a person has engaged, is engaging, or is about to**
12 **engage in a violation of sections 385.200 to 385.220 or a rule adopted or order issued**
13 **pursuant thereto, or that a person has materially aided, is materially aiding, or is about to**
14 **materially aid an act, practice, omission or course of business constituting a violation of**
15 **sections 385.200 to 385.220 or a rule adopted or order issued pursuant thereto, the director**
16 **may maintain a civil action for relief authorized under section 374.048, RSMo. A violation**
17 **of this section is a level two violation under section 374.049, RSMo.**

18 **4. The enforcement authority of the director under this section is cumulative to any**
19 **other statutory authority of the director.**

385.218. The director may promulgate rules to effectuate sections 385.200 to
2 **385.220. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
3 **that is created under the authority delegated in this section shall become effective only if**
4 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
5 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
6 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
7 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
8 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
9 **adopted after August 28, 2007, shall be invalid and void.**

385.220. 1. The provisions of sections 385.200 to 385.220 shall not apply to:

2 **(1) Warranties;**

3 **(2) Maintenance agreements;**

4 (3) Commercial transactions; and

5 (4) Service contracts sold or offered for sale to persons other than consumers.

6 2. Manufacturer's contracts on the manufacturer's products need only comply with
7 the provisions of sections 385.206, 385.208, and 385.216.

385.300. As used in sections 385.300 to 385.320, the following terms mean:

2 (1) "Administrator", the person who is responsible for the handling and
3 adjudication of claims under the product service agreements;

4 (2) "Consumer", a natural person who buys other than for purposes of resale any
5 tangible personal property that is distributed in commerce and that is normally used for
6 personal, family, or household purposes and not for business or research purposes;

7 (3) "Contract holder", a person who is the purchaser or holder of a service
8 contract;

9 (4) "Director", the director of the department of insurance, financial institutions,
10 and professional registration;

11 (5) "Maintenance agreement", a contract of limited duration that provides for
12 scheduled maintenance only;

13 (6) "Manufacturer", any of the following:

14 (a) A person who manufactures or produces the property and sells the property
15 under the person's own name or label;

16 (b) A subsidiary of the person who manufactures or produces the property;

17 (c) A person who owns one hundred percent of the entity that manufactures or
18 produces the property;

19 (d) A person that does not manufacture or produce the property, but the property
20 is sold under its trade name label;

21 (e) A person who manufactures or produces the property and the property is sold
22 under the trade name or label of another person;

23 (f) A person who does not manufacture or produce the property but, under a
24 written contract, licenses the use of its trade name or label to another person who sells the
25 property under the licensor's trade name or label;

26 (7) "Nonoriginal manufacturer's parts", replacement parts not made for or by the
27 original manufacturer of the property, commonly referred to as after market parts;

28 (8) "Person", an individual, partnership, corporation, incorporated or
29 unincorporated association, joint stock company, reciprocal, syndicate, or any similar
30 entity or combination of entities acting in concert;

31 (9) "Premium", the consideration paid to an insurer for a reimbursement
32 insurance policy;

33 (10) "Property", all forms of property;

34 (11) "Provider", a person who is contractually obligated to the service contract
35 holder under the terms of a service contract;

36 (12) "Provider fee", the consideration paid for a service contract, if any, by a
37 service contract holder;

38 (13) "Reimbursement insurance policy", a policy of insurance issued to a provider
39 and under which the insurer agrees, for the benefit of the motor vehicle extended service
40 contract holders, to discharge all of the obligations and liabilities of the provider under the
41 terms of the service contracts in the event of nonperformance by the provider. All
42 obligations and liabilities include, but are not limited to, failure of the provider to perform
43 under the service contract and the return of the unearned provider fee in the event of the
44 provider's unwillingness or inability to reimburse the unearned provider fee in the event
45 of termination of a service contract;

46 (14) "Service contract", a contract for a specific duration and consideration to
47 perform the repair, replacement, or maintenance of property or indemnification for repair,
48 replacement, or maintenance, for the operational or structural failure of any residential
49 or other property due to a defect in materials, workmanship, or normal wear and tear,
50 with or without additional provision for incidental payment of indemnity under limited
51 circumstances, including, but not limited to, unavailability of parts, obsolescence, food
52 spoilage, rental, and shipping. Service contracts may provide for the repair, replacement
53 or maintenance of property for damage resulting from power surges or accidental damage.
54 Service contract providers and administrators are not deemed to be engaged in the
55 business of insurance in this state;

56 (15) "Warranty", a warranty made solely by the manufacturer, importer, or seller
57 of property or services without charge, that is not negotiated or separated from the sale of
58 the product and is incidental to the sale of the product, that guarantees indemnity for
59 defective parts, mechanical or electrical breakdown, labor, or other remedial measures,
60 such as repair or replacement of the property or repetition of services.

385.302. 1. It is unlawful for any person to issue, sell or offer for sale in this state
2 any service contract, unless each provider has registered with the director on a form
3 prescribed by the director. Each provider shall pay to the director a fee established by the
4 director by rule, but not to exceed three hundred dollars annually.

5 2. A provider may, but is not required to, appoint an administrator or other
6 designee to be responsible for any or all of the administration of service contracts and
7 compliance with sections 385.300 to 385.320.

8 **3. A provider or its designee shall provide a copy of the service contract to the**
9 **service contract holder within a reasonable period of time following the date of purchase.**

10 **4. In order to assure the faithful performance of a provider's obligations to its**
11 **contract holders, each provider who contractually is obligated to provide service under a**
12 **service contract shall comply with one of the following subdivisions:**

13 **(1) (a) Maintain a funded reserve account for its obligations under its contract**
14 **issues and outstanding in this state. The reserve shall not be less than forty percent of**
15 **gross consideration received, less claims paid, on the sale of the service contract for all in-**
16 **force contracts. The reserve account shall be subject to examination and review by the**
17 **director; and**

18 **(b) Place in trust with the director a financial security deposit, having a value of not**
19 **less than five percent of the gross consideration received, less claims paid, on the sale of the**
20 **service contract for all service contracts issued and in force, but not less than twenty-five**
21 **thousand dollars, consisting of one of the following:**

22 **a. A surety bond issued by an authorized surety;**

23 **b. Securities of the type eligible for deposit by authorized insurers in this state;**

24 **c. Cash;**

25 **d. A letter of credit issued by a qualified financial institution; or**

26 **e. Another form of security prescribed by regulations issued by the director; or**

27 **(2) (a) Maintain a net worth of one hundred million dollars; and**

28 **(b) Provide the director with a copy of the provider's or, if the provider's financial**
29 **statements are consolidated with those of its parent company, the provider's parent**
30 **company's most recent Form 10-K filed or Form 20-F with the Securities and Exchange**
31 **Commission (SEC) within the last calendar year, or if the company does not file with the**
32 **SEC, a copy of the company's audited financial statements, which shows a net worth of the**
33 **provider or its parent company of at least one hundred million dollars. If the provider's**
34 **parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet**
35 **the provider's financial stability requirement, then the parent company shall agree to**
36 **guarantee the obligations of the obligor relating to service contracts sold by the provider**
37 **in this state; or**

38 **(3) Insure all service contracts under a reimbursement insurance policy issued by**
39 **an insurer authorized to transact insurance in this state. For the purposes of this**
40 **subsection, the reimbursement insurance policy shall contain the following provisions:**

41 **(a) In the event that the provider is unable to fulfill its obligation under contracts**
42 **issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the**

43 insurer will pay losses and unearned fees under such plans directly to the contract holder
44 making a claim under the contract;

45 (b) The insurer issuing the contractual liability policy shall assume full
46 responsibility for the administration of claims in the event of the inability of the provider
47 to do so; and

48 (c) The policy may be canceled or not renewed by either the insurer or the provider
49 not less than sixty days after written notice thereof has been given to the director and
50 provider by the insurer;

51 (4) The reimbursement insurance referenced in subdivision (3) above shall be
52 obtained from an insurer that is authorized, registered or otherwise permitted to transact
53 insurance in this state or a surplus lines insurer authorized pursuant to the laws of this
54 state and which insurer meets one of the following requirements:

55 (a) Maintain, at the time the policy is filed with the director and continuously
56 thereafter:

57 a. Surplus as to policyholders and paid-in capital of at least fifteen million dollars;
58 and

59 b. Annually file copies of the insurer's financial statements, its National Association
60 of Insurance Commissioners annual statement, and the actuarial certification if required
61 and filed in the insurer's state of domicile; or

62 (b) Maintain, at the time the policy is filed with the director and continuously
63 thereafter:

64 a. Surplus as to policyholders and paid-in capital of less than fifteen million dollars
65 but at least equal to ten million dollars;

66 b. Demonstrate to the satisfaction of the director that the insurer maintains a ratio
67 of net written premiums, wherever written, to surplus as to policyholders and paid-in
68 capital of not greater than three to one; and

69 c. Annually file copies of the insurer's financial statements, its National Association
70 of Insurance Commissioners annual statement, and the actuarial certification if required
71 and filed in the insurer's state of domicile.

72 5. Provider fees collected on service agreements shall not be subject to premium
73 taxes. Premiums for reimbursement insurance policies shall be subject to applicable taxes.

74 6. Except for compliance with the provider's registration requirement in subsection
75 1 of this section, a person marketing, selling, or offering to sell service contracts for a
76 provider that is registered under this section is exempt from licensing as a producer under
77 the insurance laws of this state.

2 **385.304. Reimbursement insurance policies insuring service contracts issued, sold**
3 **or offered for sale in this state shall state that, upon failure of the provider to perform**
4 **under the contract, including the failure to return the unearned provider fee, the insurer**
5 **that issued the policy shall pay or perform according to the provider's contractual**
6 **obligations under the service contracts insured by the insurer.**

7 **385.306. 1. Service contracts marketed, issued, sold, or offered for sale in this state**
8 **shall be written in clear, conspicuous, and understandable language, and the entire**
9 **contract shall be printed or typed in easy-to-read type and conspicuously disclose the**
10 **requirements in this section, as applicable.**

11 **2. Service contracts insured under a reimbursement insurance policy under**
12 **subdivision (3) of subsection 4 of section 385.302 shall contain a statement in substantially**
13 **the following form: "Obligations of the provider under this service contract are**
14 **guaranteed under a reimbursement insurance policy. If the provider fails to pay or**
15 **provide service on a claim within sixty days after proof of loss has been filed, the contract**
16 **holder is entitled to make a claim directly against the insurance company." A claim**
17 **against the provider may also include a claim for return of the unearned provider fee. The**
18 **service contract also shall state the name and address of the insurer.**

19 **3. Service contracts not insured under a reimbursement insurance policy under**
20 **subdivision (3) of subsection 4 of section 385.302 shall contain a statement in substantially**
21 **the following form: "Obligations of the provider under this service contract are backed**
22 **only by the full faith and credit of the provider (issuer) and are not guaranteed under a**
23 **reimbursement insurance policy." A claim against the provider shall also include a claim**
24 **for return of the unearned provider fee. The service contract shall also state the name and**
25 **address of the provider.**

26 **4. Service contracts shall identify any administrator, the provider obligated to**
27 **perform under the contract, and the service contract seller, if different than the provider**
28 **or administrator. The identities of such parties are not required to be preprinted on the**
29 **service contract and may be added to the service contract prior to delivery to the contract**
30 **holder.**

31 **5. Service contracts shall state the total purchase price and the terms under which**
the service contract is sold. The purchase price is not required to be preprinted on the
service contract and may be negotiated at the time of sale with the service contract holder.

6. If prior approval of repair work is required, the service contracts shall state the
procedure for obtaining prior approval and for making a claim, including a toll-free
telephone number for claim service and a procedure for obtaining emergency repairs
performed outside of normal business hours.

- 32 **7. Service contracts shall state the existence of any deductible amount.**
- 33 **8. Service contracts shall specify the merchandise and services to be provided and**
34 **any limitations, exceptions, or exclusions.**
- 35 **9. Service contracts shall state the conditions upon which the use of nonoriginal**
36 **manufacturers' parts, refurbished merchandise, or substitute service, may be allowed.**
37 **Conditions stated shall comply with applicable state and federal laws.**
- 38 **10. Service contracts shall state any terms, restrictions, or conditions governing the**
39 **transferability of the service contract.**
- 40 **11. Service contracts shall state any terms, restrictions, or conditions governing**
41 **termination of the service agreement by the service contract holder and provider.**
- 42 **12. Service contracts for which the service contract holder pays a separate,**
43 **identified consideration shall require every provider to permit the service contract holder**
44 **to return the contract within at least twenty days of the date of mailing of the service**
45 **contract or within at least ten days if the service contract is delivered at the time of sale or**
46 **within a longer time period permitted under the contract. If no claim has been made under**
47 **the contract, the contract is void and the provider shall refund to the contract holder the**
48 **full purchase price of the contract. A ten percent penalty per month shall be added to a**
49 **refund that is not paid within forty-five days of return of the contract to the provider. The**
50 **applicable free-look time periods on service contracts shall apply only to the original**
51 **service contract purchaser, and only if no claim has been made prior to its return to the**
52 **provider.**
- 53 **13. Service contracts shall set forth all of the obligations and duties of the service**
54 **contract holder, such as the duty to protect against any further damage and the**
55 **requirement for certain service and maintenance.**
- 56 **14. Service contracts shall state clearly whether or not the service contract provides**
57 **for or excludes consequential damages, preexisting conditions, or events covered under the**
58 **original manufacturer's warranty.**
- 59 **15. Service contracts shall state any limitations on the number or value of repairs,**
60 **replacements, or monetary settlements, as applicable, that will be provided during the term**
61 **of coverage.**
- 385.308. 1. It is unlawful for any provider to use in its name the words insurance,**
2 **casualty, guaranty, surety, mutual, or any other words descriptive of the insurance,**
3 **casualty, guaranty, or surety business, or any name deceptively similar to the name or**
4 **description of any insurance or surety corporation, or other provider.**
- 5 **2. This section shall not apply to a company that was using any of the prohibited**
6 **language in its name prior to August 28, 2007. However, a company using the prohibited**

7 language in its name shall disclose in its service contracts a statement in substantially the
8 following form: "This contract is not an insurance contract."

9 3. It is unlawful for a provider or its representative in its service contracts or
10 literature to make, permit, or cause to be made any false or misleading statement, or
11 deliberately omit any material statement that would be considered misleading if omitted,
12 in connection with the sale, offer to sell or advertisement of a product service contract.

13 4. It is unlawful for a person, such as a bank, savings and loan association, or
14 lending institution, to require the purchase of a service contract as a condition of a loan or
15 other financing transaction.

16 5. It is unlawful for a person, such as a manufacturer or retailer, to require the
17 purchase of a service contract as a condition to the sale of goods or services.

385.310. 1. A provider or administrator shall keep accurate accounts, books, and
2 records concerning transactions regulated under sections 385.300 to 385.320. However,
3 only one set of such accounts, books, and records is required to be maintained and may be
4 maintained by third parties provided the provisions of this section are met.

5 2. An administrator's or provider's accounts, books, and records shall include:

6 (1) Copies of each type of service contract issued;

7 (2) The name and address of each service contract holder to the extent that the
8 name and address have been furnished by the service contract holder;

9 (3) A list of the provider locations where service contracts are marketed, sold, or
10 offered for sale; and

11 (4) Claims files that shall contain at least the dates, amounts, and description of all
12 receipts, claims, and expenditures related to the service contracts.

13 3. Except as provided in subsection 5 of this section, an administrator or provider
14 shall retain or arrange for the retention of all records pertaining to each service contract
15 holder for at least three years after the specified period of coverage had expired.

16 4. An administrator or provider may keep all records required under sections
17 385.300 to 385.320 on a computer disk or other similar technology. If an administrator or
18 provider maintains records in other than hard copy, records shall be accessible from a
19 computer terminal available to the director and be capable of duplication to legible hard
20 copy.

21 5. An administrator or provider discontinuing business in this state shall maintain
22 or arrange for the maintenance of its records until it furnishes the director satisfactory
23 proof that it has discharged all obligations to contract holders in this state.

24 **6. An administrator or provider shall make all accounts, books, and records**
25 **concerning transactions regulated under sections 385.300 to 385.320 or other pertinent**
26 **laws available to the director upon request.**

385.312. As applicable, an insurer that issued a reimbursement insurance policy
2 **shall not terminate or nonrenew the policy until a notice of termination has been mailed**
3 **or delivered to the director. The termination or nonrenewal of a reimbursement insurance**
4 **policy shall not reduce the issuer's responsibility for service contracts issued by providers**
5 **prior to the date of the termination.**

385.314. 1. Providers are considered to be the agent of the insurer which issued the
2 **reimbursement insurance policy for purposes of obligating the insurer to contract holders**
3 **under service contracts associated with the insurer's reimbursement policy, and the**
4 **payment of premium by the provider is not a condition to the insurer's obligations for**
5 **otherwise validly issued service contracts.**

6 **2. Sections 385.300 to 385.320 shall not prevent or limit the right of an insurer**
7 **which issued a reimbursement insurance policy to seek indemnification or subrogation**
8 **against a provider if the issuer pays or is obligated to pay the service contract holder sums**
9 **that the provider was obligated to pay pursuant to the provisions of the product service**
10 **contract.**

385.316. 1. The director may conduct investigations or examinations of providers,
2 **administrators, insurers, or other persons to enforce the provisions of sections 385.300 to**
3 **385.320 and protect service contract holders in this state.**

4 **2. If the director determines that a person has engaged, is engaging, or is about to**
5 **engage in a violation of sections 385.300 to 385.320 or a rule adopted or order issued**
6 **pursuant thereto, or that a person has materially aided, is materially aiding, or is about to**
7 **materially aid an act, practice, omission, or course of business constituting a violation of**
8 **sections 385.300 to 385.320 or a rule adopted or order issued pursuant thereto, the director**
9 **may issue such administrative orders as authorized under section 374.046, RSMo. A**
10 **violation of this section is a level two violation under section 374.049, RSMo.**

11 **3. If the director believes that a person has engaged, is engaging, or is about to**
12 **engage in a violation of sections 385.300 to 385.320 or a rule adopted or order issued**
13 **pursuant thereto, or that a person has materially aided, is materially aiding, or is about to**
14 **materially aid an act, practice, omission, or course of business constituting a violation of**
15 **sections 385.300 to 385.320 or a rule adopted or order issued pursuant thereto, the director**
16 **may maintain a civil action for relief authorized under section 374.048, RSMo.**

17 **4. The enforcement authority of the director under this section is cumulative to any**
18 **other statutory authority of the director.**

385.318. The director may promulgate rules to effectuate sections 385.300 to
2 **385.320.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
3 that is created under the authority delegated in this section shall become effective only if
4 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
5 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
6 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
7 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
8 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
9 adopted after August 28, 2007, shall be invalid and void.

385.320. 1. Sections 385.300 to 385.320 shall not apply to:

- 2 (1) Warranties;
- 3 (2) Maintenance agreements;
- 4 (3) Warranties, service contracts, or maintenance agreements offered by public
5 utilities on their transmission devices to the extent they are regulated under the laws of this
6 state;
- 7 (4) Service contracts sold or offered for sale to persons other than consumers;
- 8 (5) Service contracts sold or offered to nonresidents of this state regardless of
9 whether the entity selling or offering such contracts is located or doing business in this
10 state;
- 11 (6) Motor vehicle extended service contracts, as defined in section 385.200; and
- 12 (7) Agreements or warranties which provide for the service, repair, replacement,
13 or maintenance of the systems, appliances, and structural components of residential or
14 commercial real property.

15 **2.** Manufacturer's service contracts on the manufacturer's products need only
16 comply with the provisions of sections 385.306, 385.308, and 385.316.

407.730. As used in sections 407.730 to 407.748, the following terms mean:

- 2 (1) "Advertisement", oral, written, graphic or pictorial statements made in the course of
3 solicitation of business including, without limitation, any statement or representation made in
4 a newspaper, magazine, the car rental company's proprietary web site, or other publication, or
5 contained in any notice, sign, poster, display, circular, pamphlet, or letter which may collectively
6 be called "print advertisements", or on radio or television, which may be referred to as "broadcast
7 commercials";
- 8 (2) "Authorized driver":
 - 9 (a) The renter;
 - 10 (b) The renter's spouse if the spouse is a licensed driver and satisfies the car rental
11 company's minimum age requirement;

- 12 (c) The renter's employee or co-worker if they are engaged in business activity with the
13 person to whom the vehicle is rented, are licensed drivers, and satisfy the rental company's
14 minimum age requirements;
- 15 (d) Any person who operates the vehicle during an emergency situation; and
- 16 (e) Any person expressly listed by the car rental company on the renter's contract as an
17 authorized driver;
- 18 (3) "Blackout date", any date on which an advertised price is totally unavailable to the
19 public;
- 20 (4) "Car rental company", any person or entity in the business of renting private
21 passenger vehicles to the public;
- 22 (5) "Car rental insurance", products and services that are offered in connection with and
23 incidental to the rental of a motor vehicle under subdivision (10) of subsection 1 of section
24 375.786, RSMo. This definition of optional car rental insurance or any other definition of
25 insurance shall not include collision damage waiver;
- 26 (6) "Clear and conspicuous", that the statement, representation or term being disclosed
27 is of such size, color contrast, and audibility and is so presented as to be readily noticed and
28 understood by the person to whom it is being disclosed. All language and terms should be used
29 in accordance with their common or ordinary usage and meaning;
- 30 (7) "Collision damage waiver", any product a consumer purchases from a car rental
31 company in order to waive all or part of his responsibility for damages, or loss of, a rental
32 vehicle;
- 33 (8) "Limited time availability", that the advertised rental price is only available for a
34 specific period of time or that the price is not available during certain blackout periods;
- 35 (9) "Mandatory charge", any charge, fee, or surcharge consumers must generally pay in
36 order to obtain or operate a rental vehicle;
- 37 (10) "Master rental agreement", those documents used by a car rental company for
38 expedited service to members in a program sponsored by the car rental company in which renters
39 establish a profile and select preferences for rental needs which establish the terms and
40 conditions governing the use of a rental car rented by a car rental company by a participant in a
41 master rental agreement;
- 42 (11) "Material restriction", a restriction, limitation or other requirement which
43 significantly affects the price of, use of, or a consumer's financial responsibility for a rental car;
- 44 (12) "Rental agreement", any document or combination of documents, which, when read
45 together and incorporated by reference to each other, relate to and establish the terms and
46 conditions of the rental of a motor vehicle by an individual; or when such a combination of
47 documents is entered into as part of any written master, corporate, group or individual agreement

48 setting forth the terms and conditions governing the use of a rental car rented by a car rental
49 company;

50 **(13) "Vehicle license fees", charges that may be imposed upon any transaction**
51 **originating in the state of Missouri to recoup costs incurred by a car rental company to**
52 **license, title, inspect, register, plate, and pay personal property taxes on rental vehicles.**

407.732. 1. Any advertisement shall be nondeceptive and in plain language. Deception
2 may result not only from a direct statement in the advertisement and from reasonable inferences
3 therefrom, but also from omitting or obscuring a material restriction or fact.

4 2. Print advertisements that include prices for car rentals shall make clear and
5 conspicuous disclosure of the following applicable restrictions:

6 (1) The expiration date of the price offered if it is available for less than thirty days after
7 the last date of publication of the advertisement;

8 (2) The existence of any geographical limitations on use;

9 (3) The extent of any advance reservation or advance payment requirements;

10 (4) Airport access fee disclosure;

11 (5) The existence of any penalties or higher rates that may apply for early or late returns
12 for weekly or weekend rentals;

13 (6) Existence of additional driver fee;

14 (7) The existence of blackout dates or specific blackout dates for location specific
15 advertisements;

16 (8) Nonavailability of offer at all locations;

17 (9) Disclosure of mileage caps and charges;

18 (10) Disclosure of collision damage waiver costs.

19

20 Print advertisements that include prices for car rentals, where mileage fees apply to the
21 advertised price, shall prominently disclose this extraordinary material restriction. Print
22 advertisements that include prices for car rentals, where a company sells collision damage waiver
23 to the public and does not include this cost in the advertised rate, shall prominently disclose the
24 price for collision damage waiver.

25 3. Broadcast commercials that include prices shall indicate whether substantial
26 restrictions apply and shall include:

27 (1) The expiration date of the price offered if the advertised price is available for less
28 than thirty days;

29 (2) Nonavailability of the advertised price in certain locations if that is the case;

30 (3) Mileage limitations and charges, if any;

31 (4) Price or price range for collision damage waiver.

32 4. Any advertised price shall be available in sufficient quantity to meet reasonably
33 expected public demand for the rental cars advertised for the entire advertised period, beginning
34 on the day on which the advertisement appears and continuing at least thirty days thereafter,
35 unless the advertisement clearly and conspicuously discloses a shorter or longer expiration date
36 for the offer, and in that event, through the expiration date. Prices may be advertised although
37 less cars are available than would be required to meet the expected demand, as long as this
38 limitation is clearly and conspicuously set forth in the advertisement and a reasonable number
39 of cars are made available at the advertised price.

40 5. [Any surcharge or fee, including, but not limited to, fuel surcharges, airport access
41 fees, and surcharges in lieu of sales tax that consumers must generally pay at any location in
42 order to obtain or operate a rental vehicle shall be clearly and conspicuously disclosed when a
43 price is advertised] **The existence of each additional fee, charge, or surcharge that a
44 consumer must pay and which may be imposed as a separately stated charge on a rental
45 transaction, including but in no way to be construed as limited to, airport fees and vehicle
46 license fees shall be disclosed any time a price is advertised and each fee, charge, or
47 surcharge shall be clearly and conspicuously disclosed on the rental agreement.**

48 6. A photograph of a rental car shall not be used in a price advertisement unless the
49 advertisement clearly and conspicuously discloses, in immediate proximity to the photograph,
50 the cost to rent the car depicted. A photograph of a rental car shall not be used in an
51 advertisement if the advertisement states directly or by implication that the automobile depicted
52 may be rented under certain conditions and that is not the case.

53 7. Any price advertised as a "daily price" or "price per day" shall be available for rentals
54 of a single day or more, and any price advertised as a "weekly" rate shall be available for the first
55 week and for subsequent weeks of the same rental. A rental company shall not charge more than
56 a weekly price which was advertised if a customer on a weekly rental returns the car earlier than
57 seven days. A price advertised as a "weekend rate" shall be available on both Saturday and
58 Sunday.

59 8. Any car rental advertising promotion which extends a free offer or promises a gift or
60 other incentive shall clearly and conspicuously disclose all the terms and conditions for receiving
61 the offer, gift or incentive. A gift, incentive, or other merchandise or service shall not be
62 advertised as free, if the cost of the item, in whole or in part, is included in the advertised rental
63 rate. If the gift or offer is provided by a third party, the car rental company shall be fully
64 responsible for providing the gift or offer under the terms and conditions disclosed.

65 9. A rental car shall not be advertised using the words "unlimited mileage" or other terms
66 that suggest there are absolutely no mileage restrictions on the use of the rental vehicle only
67 unless there are no geographical restrictions on the use of the vehicle.

68 10. At the time of the car rental transaction, the car rental company shall disclose the
69 following:

- 70 (1) The total cost, including any airport access fees;
71 (2) Geographical limitations;
72 (3) Advance reservation or payment requirements;
73 (4) Penalties or higher rates that may apply for early or late returns for weekly or
74 weekend rentals;
75 (5) Cost of additional driver fee;
76 (6) Blackout dates.

[407.1200. As used in sections 407.1200 to 407.1227, the following
2 terms shall mean:

3 (1) "Administrator", the person who is responsible for the administration
4 of the service contracts or the service contracts plan and who is responsible for
5 any filings required by sections 407.1200 to 407.1227;

6 (2) "Consumer", a natural person who buys other than for purposes of
7 resale any motor vehicle that is distributed in commerce and that is normally used
8 for personal, family, or household purposes and not for business or research
9 purposes;

10 (3) "Director", the director of the department of insurance;

11 (4) "Maintenance agreement", a contract of limited duration that provides
12 for scheduled maintenance only;

13 (5) "Manufacturer", a person that:

14 (a) Manufactures or produces the property and sells the property under
15 its own name or label;

16 (b) Is a wholly owned subsidiary of the person who manufactures or
17 produces the property;

18 (c) Is a corporation which owns one hundred percent of the person who
19 manufactures or produces the property;

20 (d) Does not manufacture or produce the property, but the property is
21 sold under its trade name label;

22 (e) Manufactures or produces the property and the property is sold under
23 the trade name or label of another person; or

24 (f) Does not manufacture or produce the property but, pursuant to a
25 written contract, licenses the use of its trade name or label to another person that
26 sells the property under the licensor's trade name or label;

27 (6) "Mechanical breakdown insurance", a policy, contract, or agreement
28 issued by an authorized insurer that provides for the repair, replacement, or
29 maintenance of a motor vehicle or indemnification for repair, replacement, or
30 service, for the operational or structural failure of a motor vehicle due to a defect
31 in materials or workmanship or to normal wear and tear;

32 (7) "Motor vehicle extended service contract" or "service contract", a
33 contract or agreement for a separately stated consideration or for a specific

34 duration to perform the repair, replacement, or maintenance of a motor vehicle
35 or indemnification for repair, replacement, or maintenance, for the operational or
36 structural failure due to a defect in materials, workmanship, or normal wear and
37 tear, with or without additional provision for incidental payment of indemnity
38 under limited circumstances, including, but not limited to, towing, rental, and
39 emergency road service, but does not include mechanical breakdown insurance
40 or maintenance agreements;

41 (8) "Nonoriginal manufacturer's parts", replacement parts not made for
42 or by the original manufacturer of the property, commonly referred to as "after
43 market parts";

44 (9) "Person", an individual, partnership, corporation, incorporated or
45 unincorporated association, joint stock company, reciprocal, syndicate, or any
46 similar entity or combination of entities acting in concert;

47 (10) "Premium", the consideration paid to an insurer for a reimbursement
48 insurance policy;

49 (11) "Provider", a person who administers, issues, makes, provides, sells,
50 or offers to sell a motor vehicle extended service contract, or who is contractually
51 obligated to provide service under a motor vehicle extended service contract such
52 as sellers, administrators, and other intermediaries;

53 (12) "Provider fee", the consideration paid for a service contract in excess
54 of the premium;

55 (13) "Reimbursement insurance policy", a policy of insurance issued to
56 a provider and pursuant to which the insurer agrees, for the benefit of the service
57 contract holders, to discharge all of the obligations and liabilities of the provider
58 under the terms of the service contracts in the event of nonperformance by the
59 provider. All obligations and liabilities include, but are not limited to, failure of
60 the provider to perform under the service contract and the return of the unearned
61 provider fee in the event of the provider's unwillingness or inability to reimburse
62 the unearned provider fee in the event of termination of a service contract;

63 (14) "Service contract holder" or "contract holder", a person who is the
64 purchaser or holder of a service contract;

65 (15) "Warranty", a warranty made solely by the manufacturer, importer,
66 or seller of property or services without charge, that is not negotiated or separated
67 from the sale of the product and is incidental to the sale of the product, that
68 guarantees indemnity for defective parts, mechanical or electrical breakdown,
69 labor, or other remedial measures, such as repair or replacement of the property
70 or repetition of services.]

71 [407.1203. 1. Service contracts shall not be issued, sold, or offered for
2 sale in this state unless the administrator or its designee has:

3 (1) Provided a receipt for the purchase of the service contract to the
4 contract holder at the date of purchase;

5 (2) Provided a copy of the service contract to the service contract holder
6 within a reasonable period of time from the date of purchase; and

7 (3) Complied with the provisions of sections 407.1200 to 407.1227.

8 2. All administrators of service contracts sold in this state shall file a
9 registration with the director on a form, at a fee and at a frequency prescribed by
10 the director.

11 3. In order to assure the faithful performance of a provider's obligations
12 to its contract holders, each provider who is contractually obligated to provide
13 service under a service contract shall:

14 (1) Insure all service contracts under a reimbursement insurance policy
15 issued by an insurer authorized to transact insurance in this state; or

16 (2) (a) Maintain a funded reserve account for its obligation under its
17 contracts issued and outstanding in this state. The reserves shall not be less than
18 forty percent of gross consideration received, less claims paid, on the sale of the
19 service contract for all in-force contracts. The reserve account shall be subject
20 to examination and review by the director; and

21 (b) Place in trust with the director a financial security deposit, having a
22 value of not less than five percent of the gross consideration received, less claims
23 paid, on the sale of the service contract for all service contracts issued and in
24 force, but not less than twenty-five thousand dollars, consisting of one of the
25 following:

26 a. A surety bond issued by an authorized surety;

27 b. Securities of the type eligible for deposit by authorized insurers in this
28 state;

29 c. Cash;

30 d. A letter of credit issued by a qualified financial institution; or

31 e. Another form of security prescribed by regulations issued by the
32 director; or

33 (3) (a) Maintain a net worth of one hundred million dollars; and

34 (b) Upon request, provide the director with a copy of the provider's or,
35 if the provider's financial statements are consolidated with those of its parent
36 company, the provider's parent company's most recent Form 10-K filed with the
37 Securities and Exchange Commission (SEC) within the last calendar year, or if
38 the company does not file with the SEC, a copy of the company's audited
39 financial statements, which shows a net worth of the provider or its parent
40 company of at least one hundred million dollars. If the provider's parent
41 company's Form 10-K or audited financial statements are filed to meet the
42 provider's financial stability requirement, then the parent company shall agree to
43 guarantee the obligations of the obligor relating to service contracts sold by the
44 provider in this state.

45 4. Provider fees collected on service contracts shall not be subject to
46 premium taxes. Premiums for reimbursement insurance policies shall be subject
47 to applicable premium taxes.

48 5. Except for the registration requirement in subsection 2 of this section,
49 persons marketing, selling, or offering to sell service contracts for providers that
50 comply with sections 407.1200 to 407.1227 are exempt from this state's licensing
51 requirements.

52 6. Providers complying with the provisions of sections 407.1200 to
53 407.1227 are not required to comply with other provisions of chapter 374 or 375,
54 or any other provisions governing insurance companies, except as specifically
55 provided.]
56

2 [407.1206. Reimbursement insurance policies insuring service contracts
3 issued, sold, or offered for sale in this state shall conspicuously state that, upon
4 failure of the provider to perform under the contract, such as failure to return the
5 unearned provider fee, the insurer that issued the policy shall pay on behalf of the
6 provider any sums the provider is legally obligated to pay or shall provide the
7 service which the provider is legally obligated to perform according to the
8 provider's contractual obligations under the service contracts issued or sold by the
9 provider.]

2 [407.1209. 1. Service contracts issued, sold, or offered for sale in this
3 state shall be written in clear, understandable language and the entire contract
4 shall be printed or typed in easy to read ten-point type or larger and
5 conspicuously disclose the requirements in this section, as applicable.

6 2. Service contracts insured under a reimbursement insurance policy
7 pursuant to subsection 3 of section 407.1203 shall contain a statement in
8 substantially the following form: "Obligations of the provider under this service
9 contract are guaranteed under a service contract reimbursement insurance policy.
10 If the provider fails to pay or provide service on a claim within sixty days after
11 proof of loss has been filed, the contract holder is entitled to make a claim
12 directly against the insurance company.". A claim against the provider shall also
13 include a claim for return of the unearned provider fee. The service contract shall
14 also conspicuously state the name and address of the insurer.

15 3. Service contracts not insured under a reimbursement insurance policy
16 pursuant to subsection 3 of section 407.1203 shall contain a statement in
17 substantially the following form: "Obligations of the provider under this service
18 contract are backed only by the full faith and credit of the provider (issuer) and
19 are not guaranteed under a service contract reimbursement insurance policy."
20 A claim against the provider shall also include a claim for return of the unearned
21 provider fee. The service contract shall also conspicuously state the name and
22 address of the provider.

23 4. Service contracts shall identify any administrator, the provider
24 obligated to perform the service under the contract, the service contract seller,
25 and the service contract holder to the extent that the name and address of the
service contract holder has been furnished by the service contract holder.

26 5. Service contracts shall conspicuously state the total purchase price and
27 the terms under which the service contract is sold. The purchase price is not
28 required to be preprinted on the service contract and may be negotiated at the
29 time of sale with the service contract holder.

30 6. If prior approval of repair work is required, the service contracts shall
31 conspicuously state the procedure for obtaining prior approval and for making a
32 claim, including a toll-free telephone number for claim service and a procedure
33 for obtaining emergency repairs performed outside of normal business hours.

34 7. Service contracts shall conspicuously state the existence of any
35 deductible amount.

36 8. Service contracts shall specify the merchandise and services to be
37 provided and any limitations, exceptions, and exclusions.

38 9. Service contracts shall state the conditions upon which the use of
39 nonoriginal manufacturer's parts, or substitute service, may be allowed.
40 Conditions stated shall comply with applicable state and federal laws.

41 10. Service contracts shall state any terms, restrictions, or conditions
42 governing the transferability of the service contract.

43 11. Service contracts shall state the terms, restrictions, or conditions
44 governing termination of the service contract by the service contract holder. The
45 provider of the service contract shall mail a written notice to the contract holder
46 within fifteen days of the date of termination.

47 12. Service contracts shall require every provider to permit the service
48 contract holder to return the contract within at least twenty business days of the
49 date of mailing of the service contract or within at least ten days if the service
50 contract is delivered at the time of sale or within a longer time period permitted
51 under the contract. If no claim has been made under the contract, the contract is
52 void and the provider shall refund to the contract holder the full purchase price
53 of the contract. A ten percent penalty per month shall be added to a refund that
54 is not paid within thirty days of return of the contract to the provider. The
55 applicable free-look time periods on service contracts shall only apply to the
56 original service contract purchaser.

57 13. Service contracts shall set forth all of the obligations and duties of the
58 service contract holder, such as the duty to protect against any further damage and
59 the requirement for certain service and maintenance.

60 14. Service contracts shall clearly state whether or not the service
61 contract provides for or excludes consequential damages or preexisting
62 conditions.]

63
2 [407.1212. 1. A provider shall not use in its name the words insurance,
3 casualty, guaranty, surety, mutual, or any other words descriptive of the
4 insurance, casualty, guaranty, or surety business; or a name deceptively similar
5 to the name or description of any insurance or surety corporation, or any other
provider. This section shall not apply to a company that was using any of the

6 prohibited language in its name prior to August 28, 2004. However, a company
7 using the prohibited language in its name shall conspicuously disclose in its
8 service contract the following statement: "This agreement is not an insurance
9 contract."

10 2. A provider or its representative shall not in its service contracts or
11 literature make, permit, or cause to be made any false or misleading statement,
12 or deliberately omit any material statement that would be considered misleading
13 if omitted, in connection with the sale, offer to sell or advertisement of a service
14 contract.

15 3. A person, such as a bank, savings and loan association, lending
16 institution, manufacturer or seller of any product, shall not require the purchase
17 of a service contract as a condition of a loan or a condition for the sale of any
18 property.]
19

2 [407.1215. 1. An administrator, provider, or other intermediary shall
3 keep accurate accounts, books, and records concerning transactions regulated by
4 sections 407.1200 to 407.1227.

5 2. An administrator's, provider's, or other intermediary's accounts, books,
6 and records shall include:

7 (1) Copies of each type of service contract issued;

8 (2) The name and address of each service contract holder to the extent
9 that the name and address have been furnished by the service contract holder;

10 (3) A list of the provider locations where service contracts are marketed,
11 sold, or offered for sale; and

12 (4) Claims files which shall contain at least the dates, amounts, and
13 description of all receipts, claims, and expenditures related to the service
14 contracts.

15 3. Except as provided in this section, an administrator shall retain all
16 records pertaining to each service contract holder for at least three years after the
17 specified period of coverage has expired.

18 4. An administrator, provider, or other intermediary may keep all records
19 required pursuant to sections 407.1200 to 407.1227 on a computer disk or other
20 similar technology. If an administrator, provider, or other intermediary maintains
21 records in other than hard copy, records shall be accessible from a computer
22 terminal available to the director and be capable of duplication to legible hard
23 copy.

24 5. An administrator, provider, or other intermediary discontinuing
25 business in this state shall maintain its records until it furnishes the director
26 satisfactory proof that it has discharged all obligations to contract holders in this
27 state.

28 6. An administrator, provider, or other intermediary shall make all
accounts, books, and records concerning transactions regulated pursuant to

29 sections 407.1200 to 407.1227 or other pertinent laws available to the director
30 upon request.]

31

2 [407.1218. As applicable, an insurer that issued a reimbursement
3 insurance policy shall not terminate the policy until a notice of termination, in a
4 form and time frame prescribed by the director, has been mailed or delivered to
5 the director. The termination of a reimbursement insurance policy shall not
6 reduce the issuer's responsibility for service contracts issued by providers prior
7 to the date of the termination.]

2 [407.1221. 1. Providers are considered to be the agent of the insurer that
3 issued the reimbursement insurance policy. In cases where a provider is acting
4 as an administrator and enlists other providers, the provider acting as the
5 administrator shall notify the insurer of the existence and identities of the other
6 providers.

7 2. The provisions of sections 407.1200 to 407.1227 shall not prevent or
8 limit the right of an insurer which issued a reimbursement insurance policy to
9 seek indemnification or subrogation against a provider if the insurer pays or is
10 obligated to pay the service contract holder sums that the provider was obligated
11 to pay pursuant to the provisions of the service contract or under a contractual
12 agreement.]

2 [407.1224. 1. The director may conduct investigations or examinations
3 of providers, administrators, insurers, or other persons to enforce the provisions
4 of sections 407.1200 to 407.1227 and protect service contract holders in this
5 state.

6 2. The director may take action that is necessary or appropriate to enforce
7 the provisions of sections 407.1200 to 407.1227 and the director's regulations and
8 orders, and to protect service contract holders in this state.

9 3. The director may order a service contract provider to cease and desist
10 from committing violations of sections 407.1200 to 407.1227 or the director's
11 regulations or orders, may issue an order prohibiting a service contract provider
12 from selling or offering for sale service contracts, or may issue an order imposing
13 a civil penalty, or any combination of these, if the provider has violated the
14 provisions of sections 407.1200 to 407.1227 or the director's regulations or
15 orders.

16 4. A person aggrieved by an order pursuant to this section may request
17 a hearing before the director. The hearing request shall be filed with the director
18 within twenty days of the date the director's order is effective.

19 5. Pending the hearing and the decision by the director, the director shall
20 suspend the effective date of the order. At the hearing, the burden shall be on the
21 director to show why the order issued pursuant to this section is justified. Such
hearing shall be held in accordance with the provisions of chapter 536, RSMo.

22 6. The director may bring an action in the circuit court of Cole County
 23 for an injunction or other appropriate relief to enjoin threatened or existing
 24 violations of sections 407.1200 to 407.1227 or of the director's orders or
 25 regulations. An action filed pursuant to this section may also seek restitution on
 26 behalf of persons aggrieved by a violation of sections 407.1200 to 407.1227 or
 27 orders or regulations of the director.

28 7. A person in violation of sections 407.1200 to 407.1227 or orders or
 29 regulations of the director may be assessed a civil penalty not to exceed one
 30 thousand dollars per violation.

31 8. The authority of the director pursuant to this section is in addition to
 32 other authority of the director.]
 33

2 [407.1225. The director may promulgate rules to effectuate sections
 3 407.1200 to 407.1227. Any rule or portion of a rule, as that term is defined in
 4 section 536.010, RSMo, that is created under the authority delegated in this
 5 section shall become effective only if it complies with and is subject to all of the
 6 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
 7 This section and chapter 536, RSMo, are nonseverable and if any of the powers
 8 vested with the general assembly pursuant to chapter 536, RSMo, to review, to
 9 delay the effective date, or to disapprove and annul a rule are subsequently held
 10 unconstitutional, then the grant of rulemaking authority and any rule proposed or
 11 adopted after August 28, 2004, shall be invalid and void.]

2 [407.1227. 1. The provisions of sections 407.1200 to 407.1224 shall not
 3 apply to:

- 4 (1) Warranties;
- 5 (2) Maintenance agreements;
- 6 (3) Commercial transactions; and
- 7 (4) Service contracts sold or offered for sale to persons other than
 8 consumers.

9 2. Manufacturer's contracts on the manufacturer's products need only
 10 comply with the provisions of sections 407.1209, 407.1212, and 407.1224.]

2 Section B. The repeal of sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212,
 3 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227 and the enactment of sections
 4 385.200, 385.201, 385.203, 385.204, 385.205, 385.207, 385.208, 385.209, 385.210, 385.211,
 5 385.212, 385.300, 385.301, 385.302, 385.303, 385.304, 385.305, 385.306, 385.307, 385.310,
 6 385.311, and 385.312, shall become effective January 1, 2008.

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