

FIRST REGULAR SESSION

SENATE BILL NO. 132

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS RUPP AND KEHOE.

Read 1st time January 18, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0896S.011

AN ACT

To repeal sections 375.012, 385.206, and 385.208, RSMo, and to enact in lieu thereof seven new sections relating to motor vehicle extended service contracts, with penalty provisions.

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

Section A. Sections 375.012, 385.206, and 385.208, RSMo, are repealed
2 and seven new sections enacted in lieu thereof, to be known as sections 375.012,
3 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

375.012. 1. Sections 375.012 to 375.146 may be cited as the "Insurance
2 Producers Act".

3 2. As used in sections 375.012 to 375.158, the following words mean:

4 (1) "Business entity", a corporation, association, partnership, limited
5 liability company, limited liability partnership or other legal entity;

6 (2) "Director", the director of the department of insurance, financial
7 institutions and professional registration;

8 (3) "Home state", the District of Columbia and any state or territory of the
9 United States in which the insurance producer maintains his or her principal
10 place of residence or principal place of business and is licensed to act as an
11 insurance producer;

12 (4) "Insurance", any line of authority, including life, accident and health
13 or sickness, property, casualty, variable life and variable annuity products,
14 personal, credit and any other line of authority permitted by state law or
15 regulation;

16 (5) "Insurance company" or "insurer", any person, reciprocal exchange,
17 interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 engaged in the business of insurance, including health services corporations,
19 health maintenance organizations, prepaid limited health care service plans,
20 dental, optometric and other similar health service plans, unless their exclusion
21 from this definition can be clearly ascertained from the context of the particular
22 statutory section under consideration. Insurer shall also include all companies
23 organized, incorporated or doing business pursuant to the provisions of chapters
24 375, 376, 377, 378, 379, 381 and 384. Trusteed pension plans and profit-sharing
25 plans qualified pursuant to the United States Internal Revenue Code as now or
26 hereafter amended shall not be considered to be insurance companies or insurers
27 within the definition of this section;

28 (6) "Insurance producer" or "producer", a person required to be licensed
29 pursuant to the laws of this state to sell, solicit or negotiate insurance;

30 (7) "License", a document issued by the director authorizing a person to
31 act as an insurance producer for the lines of authority specified in the
32 document. The license itself shall not create any authority, actual, apparent or
33 inherent, in the holder to represent or commit an insurance company;

34 (8) "Limited line credit insurance", credit life, credit disability, credit
35 property, credit unemployment, involuntary unemployment, mortgage life,
36 mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP)
37 insurance, and any other form of insurance offered in connection with an
38 extension of credit that is limited to partially or wholly extinguishing that credit
39 obligation that the director determines should be designated a form of limited line
40 credit insurance;

41 (9) "Limited line credit insurance producer", a person who sells, solicits
42 or negotiates one or more forms of limited line credit insurance coverage through
43 a master, corporate, group or individual policy;

44 (10) "Limited lines insurance", insurance involved in credit transactions,
45 **the line of motor vehicle extended service contracts**, insurance contracts
46 issued primarily for covering the risk of travel or any other line of insurance that
47 the director deems necessary to recognize for the purposes of complying with
48 subsection 5 of section 375.017;

49 (11) "Limited lines producer", a person authorized by the director to sell,
50 solicit or negotiate limited lines insurance;

51 (12) "Negotiate", the act of conferring directly with or offering advice
52 directly to a purchaser or prospective purchaser of a particular contract of
53 insurance concerning any of the substantive benefits, terms or conditions of the

54 contract, provided that the person engaged in that act either sells insurance or
55 obtains insurance from insurers for purchasers;

56 (13) "Person", an individual or any business entity;

57 (14) "Personal lines insurance", property and casualty insurance coverage
58 sold to individuals and families for primarily noncommercial purposes;

59 (15) "Sell", to exchange a contract of insurance by any means, for money
60 or its equivalent, on behalf of an insurance company;

61 (16) "Solicit", attempting to sell insurance or asking or urging a person to
62 apply for a particular kind of insurance from a particular company;

63 (17) "Terminate", the cancellation of the relationship between an
64 insurance producer and the insurer or the termination of the authority of the
65 producer to transact the business of insurance;

66 (18) "Uniform business entity application", the current version of the
67 National Association of Insurance Commissioners uniform business entity
68 application for resident and nonresident business entities seeking an insurance
69 producer license;

70 (19) "Uniform application", the current version of the National Association
71 of Insurance Commissioners uniform application for resident and nonresident
72 producer licensing.

73 3. All statutory references to insurance agent or insurance broker shall
74 mean insurance producer, as that term is defined pursuant to subsection 1 of this
75 section.

**385.205. 1. It is unlawful for any provider that has authorized
2 the sale of a motor vehicle extended service contract to fail to cause
3 delivery to the consumer of a fully executed motor vehicle extended
4 service contract within a commercially feasible time period, but no
5 more than thirty days from the date of purchase. It is the mailing, or
6 actual delivery of the fully executed contract, whichever is earlier, that
7 commences the free look period under subsection 14 of section 385.206.**

**8 2. It is unlawful for any provider, administrator, or motor
9 vehicle extended service contract producer who offers for sale a motor
10 vehicle extended service contract, to fail to cause delivery to the
11 consumer of an unsigned copy of the service contract offered to the
12 consumer prior to the time of sale upon a request of the same by the
13 consumer. A seller may comply with this provision by providing the
14 consumer with the copy or by directing the consumer to a website**

15 **containing an unsigned copy of the service contract.**

16 **3. A violation of this section is a level two violation under**
17 **section 374.049.**

385.206. 1. [No person shall directly] **It is unlawful for any person**
2 **in or from this state to** sell, offer for sale, or solicit the sale of a motor vehicle
3 extended service contract to a consumer, other than the following:

4 (1) **A motor vehicle dealer licensed under sections 301.550 to**
5 **301.573, also holding an organizational credit entity license under**
6 **section 375.065, along with its employee properly licensed as an**
7 **individual credit insurance producer, offering, or selling the service**
8 **contract in connection with the sale of either a motor vehicle or vehicle**
9 **services;**

10 (2) A manufacturer of motor vehicles, as defined in section 301.010;

11 (3) A federally insured depository institution;

12 (4) A lender licensed and defined under sections 367.100 to 367.215; [or]

13 (5) [An administrator, provider, manufacturer, or person working in
14 concert with an administrator, provider, or manufacturer marketing or selling a
15 motor vehicle extended service contract demonstrating] **A provider registered**
16 **with the director and having demonstrated** financial responsibility as [set
17 forth] **required** in section 385.202; or

18 **(6) A business entity producer or individual producer licensed**
19 **under section 385.207.**

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

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

29 4. Motor vehicle extended service contracts insured under a
30 reimbursement insurance policy under subsection 3 of section 385.202 shall
31 contain a statement in substantially the following form: "Obligations of the
32 provider under this service contract are guaranteed under a service contract
33 reimbursement insurance policy. If the provider fails to pay or provide service

34 on a claim within sixty days after proof of loss has been filed, the contract holder
35 is entitled to make a claim directly against the insurance company." A claim
36 against the provider also shall include a claim for return of the unearned provider
37 fee. The motor vehicle extended service contract also shall state conspicuously
38 the name and address of the insurer.

39 5. Motor vehicle extended service contracts not insured under a
40 reimbursement insurance policy pursuant to subsection 3 of section 385.202 shall
41 contain a statement in substantially the following form: "Obligations of the
42 provider under this service contract are backed only by the full faith and credit
43 of the provider (issuer) and are not guaranteed under a service contract
44 reimbursement insurance policy." A claim against the provider also shall include
45 a claim for return of the unearned provider fee. The motor vehicle extended
46 service contract also shall state conspicuously the name and address of the
47 provider.

48 6. Motor vehicle extended service contracts shall identify any
49 administrator, the provider obligated to perform the service under the contract,
50 the motor vehicle extended service contract seller, and the service contract holder
51 to the extent that the name and address of the service contract holder has been
52 furnished by the service contract holder.

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

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

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

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

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

70 laws.

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

74 13. Motor vehicle extended service contracts shall state **that subsequent**
75 **to the required free look period specified in subsection 14 of this**
76 **section, a service contract holder may cancel the contract at any time**
77 **and the provider shall refund to the contract holder one hundred**
78 **percent of the unearned pro rata provider fee, less any claims paid. A**
79 **reasonable administrative fee may be surcharged by the provider in an**
80 **amount not to exceed fifty dollars. All [the] terms, restrictions, or**
81 conditions governing termination of the service contract by the service contract
82 holder **shall be stated.** The provider of the motor vehicle extended service
83 contract shall mail a written notice to the contract holder within fifteen **business**
84 days of the date of termination.

85 14. Motor vehicle extended service contracts shall [require] **contain a**
86 **free look period that requires** every provider to permit the service contract
87 holder to return the contract **to the provider** within at least twenty business
88 days of **the** mailing date of the motor vehicle extended service contract or [within
89 at least ten days if] **the purchase date if** the service contract is **executed and**
90 delivered at the time of sale or within a longer time period permitted under the
91 contract. If no claim has been made under the contract **and the contract is**
92 **returned**, the contract is void and the provider shall refund to the contract
93 holder the full purchase price of the contract. **If a claim has been made**
94 **under the contract during the free look period and the contract is**
95 **returned, the provider shall refund to the contract holder the full**
96 **purchase price less any claims that have been paid.** A ten percent penalty
97 per month shall be added to a refund that is not paid within thirty days of return
98 of the contract to the provider. The applicable free-look time periods on service
99 contracts shall apply only to the original service contract purchaser.

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

104 16. Motor vehicle extended service contracts shall state clearly whether
105 or not the service contract provides for or excludes consequential damages or

106 preexisting conditions.

107 **17. A violation of this section is a level three violation under**
108 **section 374.049.**

385.207. 1. A business entity, prior to selling, offering for sale,
2 **or soliciting the sale of a motor vehicle extended service contract to a**
3 **consumer under subdivision (6) of subsection 1 of section 385.206, is**
4 **required to obtain, as appropriate, either a resident or nonresident**
5 **business entity producer license under sections 375.012 to 375.018 for**
6 **the limited line of motor vehicle extended service contracts.**

7 **2. A business entity applying for a resident or nonresident motor**
8 **vehicle extended service contract producer license shall make**
9 **application to the director on the uniform application as required.**

10 **3. An individual, prior to selling, offering for sale, or soliciting**
11 **the sale of a motor vehicle extended service contract to a consumer**
12 **under subdivision (6) of subsection 1 of section 385.206, is required to**
13 **obtain, as appropriate, either a resident or nonresident individual**
14 **producer license under sections 375.012 to 375.018 for either a personal**
15 **lines property and casualty license or the limited line of motor vehicle**
16 **extended service contracts.**

17 **4. An individual applying for a resident motor vehicle extended**
18 **service contract producer license shall make application to the director**
19 **on the uniform application as required, and shall be exempt from**
20 **examination under subsection 7 of section 375.016.**

21 **5. An individual applying for a nonresident motor vehicle**
22 **extended service contract producer license shall make application to**
23 **the director on the uniform application as required. If the home state**
24 **of the nonresident does not issue a license for a limited line of motor**
25 **vehicle extended service contracts, the producer may receive a limited**
26 **lines producer license in this state if the producer has obtained a**
27 **personal lines property and casualty license in his home state.**

28 **6. The director shall adopt rules under section 385.218 relating**
29 **to licensing and practices of persons acting in the capacity of motor**
30 **vehicle extended service contract producers.**

31 **7. Notwithstanding any provision of sections 375.012 to 375.018,**
32 **a producer license for the limited line of motor vehicle extended**
33 **service contracts, if not renewed by the director by its expiration date,**
34 **shall terminate on its expiration date and shall not after that date**

35 authorize its holder under sections 385.200 to 385.220 to negotiate, sell
36 or offer to sell any product in the limited line of motor vehicle
37 extended service contracts.

385.208. 1. [A provider shall not] **It is unlawful for a provider,
2 administrator, motor vehicle extended service contract producer, or
3 any other motor vehicle extended service contract seller to:**

4 (1) Use in its name the words insurance, casualty, guaranty, **warranty,**
5 surety, mutual, or any other words descriptive of the insurance, casualty,
6 guaranty, or surety business, nor shall such [provider] **person** use a name
7 deceptively similar to the name or description of any insurance or surety
8 corporation, or any other provider[. This section shall not apply to a company],
9 **provided that this prohibition shall not apply to any provider or**
10 **administrator** that was using any of the prohibited language in its name prior
11 to [August 28, 2007. However, a company using the prohibited language in its
12 name shall] **January 1, 2010, and it** disclose conspicuously in its motor vehicle
13 extended service contract the following statement: "This agreement is not an
14 insurance contract.";

15 (2) **Directly or indirectly, represent in any manner, whether by**
16 **telemarketing, broadcast marketing, electronic media, written**
17 **solicitation or any other advertisement, offer, or solicitation, a false,**
18 **deceptive or misleading statement with respect to:**

19 (a) **An affiliation with a motor vehicle manufacturer or dealer;**

20 (b) **Possession of information regarding a motor vehicle owner's**
21 **current motor vehicle manufacturer's original equipment warranty;**

22 (c) **The expiration of a motor vehicle owner's current motor**
23 **vehicle manufacturer's original equipment warranty;**

24 (d) **A requirement that such motor vehicle owner register for a**
25 **new motor vehicle extended service contract with such provider in**
26 **order to maintain coverage under the motor vehicle owner's current**
27 **motor vehicle extended service contract or manufacturer's original**
28 **equipment warranty; or**

29 (e) **Any term or provision of a motor vehicle extended service**
30 **contract, including by requesting or processing a consumer's payment**
31 **information before the material terms of the motor vehicle service**
32 **contract are adequately explained to the consumer and the consumer**
33 **confirms understanding of those terms.**

34 **A violation of this subsection is a level three violation under section**

35 **374.049.**

36 2. [A provider or its representative shall not in its motor vehicle extended
37 service contracts or literature make, permit, or cause to be made any false or
38 misleading statement, or deliberately omit any material statement that would be
39 considered misleading if omitted, in connection with the sale, offer to sell or
40 advertisement of a motor vehicle extended service contract] **Notwithstanding**
41 **subsection 6 of section 385.202 and in addition to the other prohibitions**
42 **in this section, sections 375.144 to 375.146 shall apply to the offer, sale,**
43 **solicitation, and negotiation of motor vehicle extended service**
44 **contracts.**

45 3. A person, such as a bank, savings and loan association, lending
46 institution, manufacturer or seller of any product, shall not require the purchase
47 of a service contract as a condition of a loan or a condition for the sale of any
48 property. **A violation of this subsection is a level one violation under**
49 **section 374.049.**

385.209. 1. The director may suspend, revoke, refuse to issue, or
2 **refuse to renew a registration or license under sections 385.200 to**
3 **385.220 for anyone or more of the following causes:**

4 (1) **Having filed an application for license in this state within the**
5 **previous ten years, which, as of the effective date of the license, was**
6 **incomplete in any material respect or contained incorrect, misleading**
7 **or untrue information;**

8 (2) **Violating any provision in sections 385.200 to 385.220, or**
9 **violating any rule, subpoena, or order of the director or of another**
10 **motor vehicle extended service contract regulator in any other state;**

11 (3) **Obtaining or attempting to obtain a license through material**
12 **misrepresentation or fraud;**

13 (4) **Improperly withholding, misappropriating, or converting any**
14 **moneys or properties received in the course of doing business;**

15 (5) **Misrepresenting the terms of an actual or proposed motor**
16 **vehicle extended service contract or application for such contract;**

17 (6) **Having been convicted of any felony or a crime involving**
18 **moral turpitude;**

19 (7) **Using fraudulent, coercive, or dishonest practices, or**
20 **demonstrating incompetence, untrustworthiness, or financial**
21 **irresponsibility in the conduct of business in this state or elsewhere;**

22 (8) **Is enjoined or restrained by a court of competent jurisdiction**

23 in an action instituted by any officer of any state or the United States
24 from engaging in or continuing an act, practice or course of business
25 involving motor vehicle extended service contracts, financial services,
26 investments, credit, insurance, banking, or finance;

27 (9) Is the subject of an order, issued after notice and opportunity
28 for hearing, prohibiting a violation of law, or refusing, revoking or
29 suspending a license, by a service contract, financial service,
30 investment, credit, insurance, banking, or finance regulator of any state
31 or the United States;

32 (10) Having a producer license or its equivalent, denied,
33 suspended, or revoked in any other state, province, district, or
34 territory;

35 (11) Signing the name of another to an application for license or
36 to any document related to a motor vehicle extended service contract
37 transaction without authorization;

38 (12) Unlawfully acting as a motor vehicle extended service
39 contract producer without a license;

40 (13) Failing to comply with an administrative or court order
41 imposing a child support obligation; or

42 (14) Failing to comply with any administrative or court order
43 directing payment of state or federal income tax.

44 2. In the event that the action by the director is not to renew or
45 to deny an application for a license, the director shall notify the
46 applicant or licensee in writing and advise the applicant or licensee of
47 the reason for the denial or nonrenewal. Appeal of the nonrenewal or
48 denial of the application for a license shall be made pursuant to the
49 provisions of chapter 621. Notwithstanding section 621.120, the
50 director shall retain discretion in refusing a license or renewal and
51 such discretion shall not transfer to the administrative hearing
52 commission.

53 3. The license of a business entity licensed as a motor vehicle
54 extended service contract producer may be suspended, revoked,
55 renewal refused, or an application may be refused if the director finds
56 that a violation by an individual motor vehicle service contract was
57 known or should have been known by one or more of the partners,
58 officers or managers acting on behalf of the business entity and the
59 violation was neither reported to the director nor corrective action

60 taken.

61 4. The director may also revoke or suspend pursuant to
62 subsection 1 of this section any license issued by the director where the
63 licensee has failed to renew or has surrendered such license.

64 5. Every motor vehicle extended service contract producer
65 licensed in this state shall notify the director of any change of address,
66 on forms prescribed by the director, within thirty days of the change.
67 If the failure to notify the director of the change of address results in
68 an inability to serve the insurance producer with a complaint as
69 provided by sections 621.045 to 621.198, then the director may
70 immediately revoke the license of the producer until such time as
71 service may be obtained.

72 6. A motor vehicle extended service contract producer shall
73 report to the director any administrative or civil action taken against
74 the producer in another jurisdiction or by another governmental
75 agency in this state within thirty days of the final disposition of the
76 matter. This report shall include a copy of the order, consent order or
77 other relevant legal documents.

78 7. Within thirty days of the initial pretrial hearing date, a motor
79 vehicle extended service contract producer shall report to the director
80 any criminal proceeding initiated by any state or the United States for
81 any violation of law by the producer. The report shall include a copy
82 of the indictment or information filed, the order resulting from the
83 hearing and any other relevant legal documents.

385.211. 1. A provider registered to issue motor vehicle extended
2 service contracts in this state shall maintain a register of appointed
3 motor vehicle extended service contract producers who are authorized
4 to sell, offer for sale, or solicit the sale of motor vehicle extended
5 service contracts in this state. Within thirty days of a provider
6 authorizing a producer to sell, offer for sale, or solicit the sale of motor
7 vehicle extended service contracts, the provider shall enter the name
8 and license number of the producer in the company registry of
9 appointed motor vehicle extended service contract producers.

10 2. Within thirty days of a provider terminating a producer's
11 appointment to sell, offer for sale, or solicit the sale of motor vehicle
12 extended service contracts, the provider shall update the registry with
13 the effective date of the termination. If a provider has possession of

14 **information relating to any cause for discipline under section 385.209,**
15 **the provider shall notify the director of this information in**
16 **writing. The privileges and immunities applicable to insurers under**
17 **section 375.022 shall apply to providers for any information reported**
18 **under this subsection.**

19 **3. No fee shall be charged for adding a producer to or removing**
20 **a producer from the registry.**

✓
Unofficial

Bill

Copy