

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 132**  
96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR RUPP.

Offered April 11, 2011.

Senate Substitute adopted, April 11, 2011.

Taken up for Perfection April 11, 2011. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0896S.03P

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**AN ACT**

To repeal sections 385.200, 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.

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

Section A. Sections 385.200, 385.206, and 385.208, RSMo, are repealed  
2 and seven new sections enacted in lieu thereof, to be known as sections 385.200,  
3 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

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

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

6 (2) "**Business entity**", any **partnership, corporation, incorporated**  
7 **or unincorporated association, limited liability company, limited**  
8 **liability partnership, joint stock company, reciprocal, syndicate, or any**  
9 **similar entity**;

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

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

13 or research purposes;

14 [(3)] (4) "Dealers", any motor vehicle dealer or boat dealer licensed or  
15 required to be licensed under the provisions of sections 301.550 to 301.573;

16 [(4)] (5) "Director", the director of the department of insurance, financial  
17 institutions and professional registration;

18 [(5)] (6) "Maintenance agreement", a contract of limited duration that  
19 provides for scheduled maintenance only;

20 [(6)] (7) "Manufacturer", any of the following:

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

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

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

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

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

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

34 [(7)] (8) "Mechanical breakdown insurance", a policy, contract, or  
35 agreement issued by an authorized insurer who provides for the repair,  
36 replacement, or maintenance of a motor vehicle or indemnification for repair,  
37 replacement, or service, for the operational or structural failure of a motor vehicle  
38 due to a defect in materials or workmanship or to normal wear and tear;

39 [(8)] (9) "Motor vehicle extended service contract" or "service contract",  
40 a contract or agreement for a separately stated consideration and for a specific  
41 duration to perform the repair, replacement, or maintenance of a motor vehicle  
42 or indemnification for repair, replacement, or maintenance, for the operational  
43 or structural failure due to a defect in materials, workmanship, or normal wear  
44 and tear, with or without additional provision for incidental payment of  
45 indemnity under limited circumstances, including but not limited to towing,  
46 rental, and emergency road service, but does not include mechanical breakdown  
47 insurance or maintenance agreements;

48 [(9)] (10) "Nonoriginal manufacturer's parts", replacement parts not

49 made for or by the original manufacturer of the property, commonly referred to  
50 as after-market parts;

51 ~~[(10)]~~ **(11)** "Person", an individual, partnership, corporation, incorporated  
52 or unincorporated association, joint stock company, reciprocal, syndicate, or any  
53 similar entity or combination of entities acting in concert;

54 ~~[(11)]~~ **(12)** "Premium", the consideration paid to an insurer for a  
55 reimbursement insurance policy;

56 ~~[(12)]~~ **(13)** "Producer", **any business entity or individual person**  
57 **selling, offering, negotiating, or soliciting a motor vehicle extended**  
58 **service contract and required to be licensed as a producer under**  
59 **subsection 1 of section 385.206;**

60 **(14)** "Provider", a person who is contractually obligated to the service  
61 contract holder under the terms of a motor vehicle extended service contract;

62 ~~[(13)]~~ **(15)** "Provider fee", the consideration paid for a motor vehicle  
63 extended service contract by a service contract holder;

64 ~~[(14)]~~ **(16)** "Reimbursement insurance policy", a policy of insurance  
65 issued to a provider and under which the insurer agrees, for the benefit of the  
66 motor vehicle extended service contract holders, to discharge all of the obligations  
67 and liabilities of the provider under the terms of the motor vehicle extended  
68 service contracts in the event of nonperformance by the provider. All obligations  
69 and liabilities include, but are not limited to, failure of the provider to perform  
70 under the motor vehicle extended service contract and the return of the unearned  
71 provider fee in the event of the provider's unwillingness or inability to reimburse  
72 the unearned provider fee in the event of termination of a motor vehicle extended  
73 service contract;

74 ~~[(15)]~~ **(17)** "Service contract holder" or "contract holder", a person who  
75 is the purchaser or holder of a motor vehicle extended service contract;

76 ~~[(16)]~~ **(18)** "Warranty", a warranty made solely by the manufacturer,  
77 importer, or seller of property or services without charge, that is not negotiated  
78 or separated from the sale of the product and is incidental to the sale of the  
79 product, that guarantees indemnity for defective parts, mechanical or electrical  
80 breakdown, labor, or other remedial measures, such as repair or replacement of  
81 the property or repetition of services.

**385.205. 1. It is unlawful for any provider that has authorized a**  
**2 motor vehicle extended service contract with a consumer to fail to**  
**3 cause delivery to the consumer of a fully executed motor vehicle**

4 **extended service contract within a commercially feasible time period,**  
5 **but no more than forty-five days from the date the consumer's initial**  
6 **payment is processed. It is the mailing, or actual delivery of the fully**  
7 **executed contract, whichever is earlier, that commences the free look**  
8 **period under subsection 14 of section 385.206.**

9 **2. It is unlawful for any provider, administrator, producer, or**  
10 **any other person who offers to a consumer a motor vehicle extended**  
11 **service contract, to fail, upon request, to cause delivery to the**  
12 **consumer of an unsigned copy of the written contract prior to the time**  
13 **the consumer's initial payment is processed. An offeror may comply**  
14 **with this provision by providing the consumer with the copy or by**  
15 **directing the consumer to a website containing an unsigned copy of the**  
16 **service contract.**

17 **3. A violation of this section is a level two violation under**  
18 **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], negotiate, or solicit [the sale of]**  
3 **a motor vehicle extended service contract [to] with a consumer, other than the**  
4 **following:**

5 **(1) A motor vehicle dealer licensed under sections 301.550 to**  
6 **301.573, along with its authorized employees offering the service**  
7 **contract in connection with the sale of either a motor vehicle or vehicle**  
8 **maintenance or repair services;**

9 **(2) A manufacturer of motor vehicles, as defined in section 301.010, along**  
10 **with its authorized employees;**

11 **(3) A federally insured depository institution, along with its**  
12 **authorized employees;**

13 **(4) A lender licensed and defined under sections 367.100 to 367.215,**  
14 **along with its authorized employees; [or]**

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

20 **(6) A business entity producer or individual producer licensed**  
21 **under section 385.207; or**

22           **(7) A vehicle owner transferring an existing motor vehicle**  
23 **extended service contract to a subsequent owner of the same vehicle.**

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

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

33           4. Motor vehicle extended service contracts insured under a  
34 reimbursement insurance policy under subsection 3 of section 385.202 shall  
35 contain a statement in substantially the following form: "Obligations of the  
36 provider under this service contract are guaranteed under a service contract  
37 reimbursement insurance policy. If the provider fails to pay or provide service  
38 on a claim within sixty days after proof of loss has been filed, the contract holder  
39 is entitled to make a claim directly against the insurance company." A claim  
40 against the provider also shall include a claim for return of the unearned provider  
41 fee. The motor vehicle extended service contract also shall state conspicuously  
42 the name and address of the insurer.

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

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

57           7. Motor vehicle extended service contracts shall state conspicuously the

58 total purchase price and the terms under which the motor vehicle extended  
59 service contract is sold. The purchase price is not required to be preprinted on  
60 the motor vehicle extended service contract and may be negotiated at the time of  
61 sale with the service contract holder.

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

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

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

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

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

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

89 14. Motor vehicle extended service contracts shall [require] **contain a**  
90 **free look period that requires** every provider to permit the service contract  
91 holder to return the contract **to the provider** within at least twenty business  
92 days of **the** mailing date of the motor vehicle extended service contract or [within  
93 at least ten days if] **the contract date if the service contract is executed and**

94 delivered at the time of sale or within a longer time period permitted under the  
95 contract. If no claim has been made under the contract **and the contract is**  
96 **returned**, the contract is void and the provider shall refund to the contract  
97 holder the full purchase price of the contract. **If a claim has been made**  
98 **under the contract during the free look period and the contract is**  
99 **returned, the provider shall refund to the contract holder the full**  
100 **purchase price less any claims that have been paid.** A ten percent penalty  
101 per month shall be added to a refund that is not paid within thirty days of return  
102 of the contract to the provider. The applicable free-look time periods on service  
103 contracts shall apply only to the original service contract purchaser.

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

108 16. Motor vehicle extended service contracts shall state clearly whether  
109 or not the service contract provides for or excludes consequential damages or  
110 preexisting conditions.

111 17. **The contract requirements of subsections 3 to 16 of this**  
112 **section shall apply to motor vehicle extended service contracts made**  
113 **with consumers in this state. A violation of subsections 3 to 16 of this**  
114 **section is a level two violation under section 374.049.**

115 18. **A violation of subsections 1 or 2 of this section is a level**  
116 **three violation under section 374.049.**

385.207. 1. **A business entity, prior to selling, offering,**  
2 **negotiating, or soliciting a motor vehicle extended service contract**  
3 **with a consumer under subdivision (6) of subsection 1 of section**  
4 **385.206, shall apply for and obtain licensure with the director as a**  
5 **business entity producer in accordance with this section.**

6 2. **A business entity applying for a producer license under**  
7 **sections 385.200 to 385.220 shall make application to the director on an**  
8 **application made available by the director and shall pay an initial and**  
9 **renewal licensure fee in an amount to be determined by the director,**  
10 **but which shall not exceed one hundred dollars for a business entity.**

11 3. **An individual, prior to selling, offering, negotiating, or**  
12 **soliciting a motor vehicle extended service contract with a consumer**  
13 **under subdivision (6) of subsection 1 of section 385.206, shall apply for**

14 **and obtain licensure with the director as an individual producer in**  
15 **accordance with this section.**

16 **4. An individual applying for a producer license under section**  
17 **385.200 to 385.220 shall make application to the director on an**  
18 **application made available by the director and shall pay an initial and**  
19 **renewal licensure fee in an amount to be determined by the director,**  
20 **but which shall not exceed twenty-five dollars for an individual**  
21 **producer. No examination of an applicant under this subsection shall**  
22 **be required.**

23 **5. Unless licensure is refused by the director under section**  
24 **385.209, persons applying for license under this section shall be issued**  
25 **a producer license for a term of two years. A producer's license shall**  
26 **be renewed biennially upon application for renewal and payment of the**  
27 **fee. Such license shall continue in effect unless terminated under**  
28 **subsection 6 of this section, or refused, revoked, or suspended under**  
29 **section 385.209.**

30 **6. A producer license issued under this section, if not renewed**  
31 **by the director by its expiration date, shall terminate on its expiration**  
32 **date and shall not after that date authorize its holder under sections**  
33 **385.200 to 385.220 to sell, offer, negotiate, or solicit motor vehicle**  
34 **extended service contracts.**

35 **7. In connection with a business entity's application as a**  
36 **producer and at renewal, the business entity shall provide a list to the**  
37 **director of all locations in this state at which it offers motor vehicle**  
38 **extended service contracts.**

39 **8. The director shall adopt rules under section 385.218 relating**  
40 **to licensing and practices of persons acting as a producer under this**  
41 **section.**

**385.208. 1. [A provider shall not] It is unlawful for a provider,**  
2 **administrator, producer, or any other person selling, offering,**  
3 **negotiating, or soliciting a motor vehicle extended service contract 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 disclose] **January 1, 2011, and it discloses** conspicuously in its  
13 motor vehicle extended service contract the following statement: "This agreement  
14 is not an 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.**

31 **A violation of this subsection is a level three violation under section**  
32 **374.049.**

33 2. [A provider or its representative shall not in its motor vehicle extended  
34 service contracts or literature make, permit, or cause to be made any false or  
35 misleading statement, or deliberately omit any material statement that would be  
36 considered misleading if omitted, in connection with the sale, offer to sell or  
37 advertisement of a motor vehicle extended service contract] **It is unlawful for**  
38 **any person, in connection with the offer, sale, solicitation, or**  
39 **negotiation of a motor vehicle extended service contract, directly or**  
40 **indirectly to:**

41 **(1) Employ any deception, device, scheme, or artifice to defraud;**

42 **(2) As to any material fact, make or use any misrepresentation,**  
43 **concealment, or suppression;**

44 **(3) Engage in any pattern or practice of making any false**  
45 **statement of material fact; or**

46 **(4) Engage in any act, practice, or course of business which**

47 **operates as a fraud or deceit upon any person.**

48 **A violation of this subsection is a level three violation under section**  
49 **374.049.**

50 **3. Any person who knowingly employs, uses, or engages in any**  
51 **conduct in violation of subsection 2 of this section with the intent to**  
52 **defraud shall be guilty of a felony and, upon conviction, may be subject**  
53 **to imprisonment for a term not to exceed ten years. In addition to any**  
54 **fine or imprisonment imposed, a court may order restitution to the**  
55 **victim.**

56 **4. A person, such as a bank, savings and loan association, lending**  
57 **institution, manufacturer or seller of any product, shall not require the purchase**  
58 **of a service contract as a condition of a loan or a condition for the sale of any**  
59 **property. A violation of this subsection is a level one violation under**  
60 **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 any of the following causes, if the applicant or licensee has:**

4 **(1) 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) Violated any provision in sections 385.200 to 385.220, or**  
9 **violated any rule, subpoena, or order of the director;**

10 **(3) Obtained or attempted to obtain a license through material**  
11 **misrepresentation or fraud;**

12 **(4) Misappropriated or converted any moneys or properties**  
13 **received in the course of doing business;**

14 **(5) Been convicted of any felony;**

15 **(6) Used fraudulent, coercive, or dishonest practices, or**  
16 **demonstrated incompetence, untrustworthiness, or financial**  
17 **irresponsibility in the conduct of business in this state or elsewhere;**

18 **(7) Been found in violation of law by a court of competent**  
19 **jurisdiction in an action instituted by any officer of any state or the**  
20 **United States in any matter involving motor vehicle extended service**  
21 **contracts, financial services, investments, credit, insurance, banking,**  
22 **or finance;**

23 **(8) Had a producer license or its equivalent, denied, suspended,**

24 or revoked in any other state, province, district, or territory;

25 (9) Been refused a license or had a license revoked or suspended  
26 by a state or federal regulator of service contracts, financial services,  
27 investments, credit, insurance, banking, or finance;

28 (10) Signed the name of another to an application for license or  
29 to any document related to a motor vehicle extended service contract  
30 transaction without authorization;

31 (11) Unlawfully acted as a producer without a license;

32 (12) Failed to comply with an administrative or court order  
33 imposing a child support obligation;

34 (13) Failed to comply with any administrative or court order  
35 directing payment of state or federal income tax; or

36 (14) Has within the last fifteen years been declared insolvent by  
37 the director or a motor vehicle extended service contract regulator of  
38 another state or has been the subject of a bankruptcy petition.

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

48 3. The license of a business entity producer may be suspended,  
49 revoked, renewal refused, or an application may be refused if the  
50 director finds that a violation by an individual acting under the  
51 direction of the business entity was known or should have been known  
52 by one or more of the partners, officers, or managers acting on behalf  
53 of the business entity and the violation was neither reported to the  
54 director nor corrective action taken.

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

58 5. Every producer licensed under this section shall notify the  
59 director of any change of address, on forms prescribed by the director,  
60 within thirty days of the change. If the failure to notify the director of

61 the change of address results in an inability to serve the producer with  
62 a complaint as provided by sections 621.045 to 621.198, then the  
63 director may immediately revoke the license of the producer until such  
64 time as service may be obtained.

65 6. A producer shall report to the director any license revocation  
66 or civil action taken against the producer in another jurisdiction or by  
67 another governmental agency in this state within thirty days of the  
68 final disposition of the matter. This report shall include a copy of the  
69 order, consent order, or other relevant legal documents.

70 7. Within thirty days of the initial pretrial hearing date or  
71 arraignment, a producer shall report to the director any felony  
72 proceeding initiated by any state or the United States for any violation  
73 of law by the producer. The report shall include a copy of the  
74 indictment or information filed, the order resulting from the hearing  
75 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 business  
3 entity producers who are authorized to sell, offer, negotiate, or solicit  
4 the sale of motor vehicle extended service contracts in this state, and  
5 shall make such list available for inspection upon request by the  
6 director. Within thirty days of a provider authorizing a producer to  
7 sell, offer, negotiate, or solicit motor vehicle extended service  
8 contracts, the provider shall enter the name and license number of the  
9 producer in the company registry of producers.

10 2. Within thirty days of a provider terminating a business entity  
11 producer's appointment to sell, offer, negotiate, or solicit 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.

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