

SECOND REGULAR SESSION

HOUSE BILL NO. 1626

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES YATES (Sponsor) AND COOPER (120) (Co-sponsor).

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4710L.01I

AN ACT

To repeal sections 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-two 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 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 385.200, 385.201, 385.202, 385.203, 385.204, 385.205, 385.206, 385.207, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303, 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, and 385.312, to read as follows:

385.200. As used in sections 385.200 to 385.212, the following terms shall 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 385.211;**
- (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;**
- (3) "Dealers", any motor vehicle dealer or boat dealer licensed or required to be licensed under the provisions of sections 301.550 to 301.573, RSMo;**
- (4) "Director", the director of the department of insurance;**

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.

- 11 (5) "Fronting company", a dealer that authorizes a third-party administrator or
12 provider to use its name or business to evade or circumvent a sale, an offer for sale, or a
13 solicitation of a sale of a service contract to a consumer;
- 14 (6) "Maintenance agreement", a contract of limited duration that provides for
15 scheduled maintenance only;
- 16 (7) "Manufacturer", a person that:
- 17 (a) Manufactures or produces the property and sells the property under its own
18 name or label;
- 19 (b) Is a wholly owned subsidiary of the person who manufactures or produces the
20 property;
- 21 (c) Is a corporation which owns one hundred percent of the person who
22 manufactures or produces the property;
- 23 (d) Does not manufacture or produce the property, but the property is sold under
24 its trade name or label;
- 25 (e) Manufactures or produces the property and the property is sold under the trade
26 name or label of another person; or
- 27 (f) Does not manufacture or produce the property but, under a written contract,
28 licenses the use of its trade name or label to another person that sells the property under
29 the licensor's trade name or label;
- 30 (8) "Mechanical breakdown insurance", a policy, contract, or agreement issued by
31 an authorized insurer that provides for the repair, replacement, or maintenance of a motor
32 vehicle or indemnification for repair, replacement, or service, for the operational or
33 structural failure of a motor vehicle due to a defect in materials, workmanship, or normal
34 wear and tear;
- 35 (9) "Motor vehicle extended service contract" or "service contract", a contract or
36 agreement for a separately stated consideration or for a specific duration to perform the
37 repair, replacement, or maintenance of a motor vehicle or indemnification for repair,
38 replacement, or maintenance, for the operational or structural failure due to a defect in
39 materials, workmanship, or normal wear and tear, with or without additional provision
40 for incidental payment of indemnity under limited circumstances, including, but not
41 limited to, towing, rental, and emergency road service, but does not include mechanical
42 breakdown insurance or maintenance agreements;
- 43 (10) "Nonoriginal manufacturer's parts", replacement parts not made for or by the
44 original manufacturer of the property, commonly referred to as after market parts;

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

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

50 (13) "Provider", a person who administers, issues, makes, provides, sells, or offers
51 a motor vehicle extended service contract, or who is contractually obligated to the service
52 contract holder under the terms of a motor vehicle extended service contract, such as
53 sellers, administrators, and other intermediaries;

54 (14) "Provider fee", the consideration paid for a motor vehicle extended service
55 contract by a service contract holder;

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

65 (16) "Service contract holder" or "contract holder", a person who is the purchaser
66 or holder of a motor vehicle extended service contract;

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

 385.201. 1. Motor vehicle extended service contracts shall not be issued, sold, or
2 offered for sale in this state unless the administrator 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 385.212.

8 **2. All administrators of motor vehicle extended service contracts sold in this state**
9 **shall file a registration with the director on a form, at a fee and at a frequency prescribed**
10 **by the 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) Maintain a funded reserve account for its obligation under its contracts issued**
17 **and outstanding in this state. The reserves shall not be less than forty percent of gross**
18 **consideration received, less claims paid, on the sale of the motor vehicle extended service**
19 **contract for all in-force contracts. The reserve account shall be subject to examination and**
20 **review by the director; and the provider shall place in trust with the director, a financial**
21 **security deposit, having a value of not less than five percent of the gross consideration**
22 **received, less claims paid, on the sale of the motor vehicle extended service contract for all**
23 **motor vehicle extended service contracts issued and in force, but not less than twenty-five**
24 **thousand dollars, consisting of one of the following:**

25 **(a) A surety bond issued by an authorized surety;**

26 **(b) Securities of the type eligible for deposit by authorized insurers in this state;**

27 **(c) Cash;**

28 **(d) A letter of credit issued by a qualified financial institution; or**

29 **(e) Another form of security prescribed by regulations issued by the director; or**

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

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

44 **5. Except for the registration requirement in subsection 2 of this section, persons**
45 **marketing, selling, or offering to sell motor vehicle extended service contracts for providers**
46 **that comply with sections 385.200 to 385.212 are exempt from this state's licensing**
47 **requirements.**

48 **6. Providers complying with the provisions of sections 385.200 to 385.212 are not**
49 **required to comply with other provisions of chapter 374 or 375, RSMo, or any other**
50 **provisions governing insurance companies, except as specifically provided.**

385.202. 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 which the**
6 **provider is legally obligated to perform according to the provider's contractual obligations**
7 **under the motor vehicle extended service contract issued or sold by the provider.**

385.203. 1. No person, other than a dealer, shall sell, offer for sale, or solicit the
2 **sale of a service contract to a consumer.**

3 **2. No administrator or provider shall use a dealer as a fronting company, and no**
4 **dealer shall act as a fronting company.**

5 **3. Motor vehicle extended service contracts issued, sold, or offered for sale in this**
6 **state shall be written in clear, understandable language, and the entire contract shall be**
7 **printed or typed in easy to read ten-point type or larger and conspicuously disclose the**
8 **requirements in this section, as applicable.**

9 **4. Motor vehicle extended service contracts insured under a reimbursement**
10 **insurance policy under subsection 3 of section 385.201 shall contain a statement in**
11 **substantially the following form: "Obligations of the provider under this service contract**
12 **are guaranteed under a service contract reimbursement insurance policy. If the provider**
13 **fails to pay or provide service on a claim within sixty days after proof of loss has been filed,**
14 **the contract holder is entitled to make a claim directly against the insurance company."**
15 **A claim against the provider shall also include a claim for return of the unearned provider**
16 **fee. The motor vehicle extended service contract shall also conspicuously state the name**
17 **and address of the insurer.**

18 **5. Motor vehicle extended service contracts not insured under a reimbursement**
19 **insurance policy under subsection 3 of section 385.201 shall contain a statement in**
20 **substantially the following form: "Obligations of the provider under this service contract**
21 **are backed only by the full, faith, and credit of the provider (issuer) and are not**
22 **guaranteed under a service contract reimbursement insurance policy."** A claim against

23 the provider shall also include a claim for return of the unearned provider fee. The motor
24 vehicle extended service contract shall also conspicuously state the name and address of
25 the provider.

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

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

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

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

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

42 11. Motor vehicle extended service contracts shall state the condition upon which
43 the use of nonoriginal manufacturer's parts or substitute service may be allowed.
44 Conditions stated shall comply with applicable state and federal law.

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

47 13. Motor vehicle extended service contracts shall state the terms, restrictions, or
48 conditions governing termination of the service contract by the service contract holder.
49 The provider of the motor vehicle extended service contract shall mail a written notice to
50 the contract holder within fifteen days of the date of termination.

51 14. Motor vehicle extended service contracts shall require every provider to permit
52 the service contract holder to return the contract within at least twenty business days of
53 the date of mailing of the motor vehicle extended service contract or within at least ten days
54 if the service contract is delivered at the time of sale or within a longer time period
55 permitted under the contract. If no claim has been made under the contract, the contract
56 is void and the provider shall refund to the contract holder the full purchase price of the
57 contract. A ten percent penalty per month shall be added to a refund that is not paid

58 within thirty days of return of the contract to the provider. The applicable free-look time
59 periods on service contracts shall only apply to the original service contract purchaser.

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

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

385.204. 1. A provider shall not use in its name the words of insurance, casualty,
2 guaranty, surety, mutual, or any other words descriptive of the insurance, casualty,
3 guaranty, or surety business, or a name deceptively similar to the name or description of
4 any insurance or surety corporation, or any other provider. This section shall not apply
5 to a company that was using any of the prohibited language in its name prior to August 28,
6 2006. However, a company using the prohibited language in its name shall conspicuously
7 disclose in its motor vehicle extended service contract the following statement: "This
8 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, or
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.

385.205. 1. An administrator, provider, or other intermediary shall keep accurate
2 accounts, books, and records concerning transactions regulated by sections 385.200 to
3 385.212.

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

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

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

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

11 (4) Claims files which shall contain at least the dates, amounts, and description of
12 all receipts, claims, and expenditures related to the motor vehicle extended service
13 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 385.212 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 under sections 385.200 to 385.212
27 or other pertinent laws available to the director upon request.

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

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

5 2. The provisions of sections 385.200 to 385.212 shall not prevent or limit the right
6 of an insurer which 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 or under contractual agreement.

 385.210. 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
3 385.212 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 385.212 or a rule adopted or order issued under
6 thereto, or that a person has materially aided, is materially aiding, or is about to materially
7 aid an act, practice, omission, or course of business constituting a violation of sections
8 385.200 to 385.212 or a rule adopted or order issued under thereto, the director may issue
9 such administrative orders as authorized under section 374.046, RSMo. A violation of any

10 of these sections is a level two violation, consisting of a one thousand dollar fine for each
11 violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum
12 for multiple violations.

13 **3. If the director believes that a person has engaged, is engaging, or is about to**
14 **engage in a violation of sections 385.200 to 385.212 or a rule adopted or order issued under**
15 **thereto, or that a person has materially aided, is materially aiding, or is about to materially**
16 **aid an act, practice, omission, or course of business constituting a violation of sections**
17 **385.200 to 385.212 or a rule adopted or order issued under thereto, the director may**
18 **maintain a civil action for the following relief:**

19 **(1) Issue a permanent or temporary injunction, restraining order, or declaratory**
20 **judgment;**

21 **(2) Order other appropriate or ancillary relief, which may include:**

22 **(a) An asset freeze, accounting, writ of attachment, writ of general or specific**
23 **execution, and appointment of a receiver or conservator, which may be the director, for**
24 **the defendant or the defendant's assets;**

25 **(b) Ordering the director to take charge and control of a defendant's property,**
26 **including accounts in a depository institution, rents, and profits; to collect debts; and to**
27 **acquire and dispose of property;**

28 **(c) Imposing a civil penalty or forfeiture;**

29 **(d) Upon showing financial loss, injury, or harm to identifiable consumers,**
30 **imposing an order of restitution or disgorgement directed to a person who has engaged in**
31 **an act, practice, omission, or course of business in violation of the laws or rules relating to**
32 **insurance;**

33 **(e) Ordering the payment of prejudgment and post-judgment interest;**

34 **(f) Ordering reasonable costs of investigation and prosecution; and**

35 **(g) Ordering the payment to the insurance dedicated fund an additional amount**
36 **equal to ten percent of the total restitution or disgorgement ordered, or such other amount**
37 **as awarded by the court, which shall be appropriated to an insurance consumer education**
38 **program administered by the director; or**

39 **(3) Order such other relief as the court considers necessary or appropriate.**
40

41 **A violation of any of these sections is a level two violation, consisting of a one thousand**
42 **dollar fine for each violation, up to an aggregate civil penalty or forfeiture of fifty thousand**
43 **dollars per annum for multiple violations.**

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

385.211. The director may promulgate rules to implement the provisions of sections 385.200 to 385.212. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

385.212. 1. The provisions of sections 385.200 to 385.212 shall not apply to:

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

2. Manufacturer's contracts on the manufacturer's products need only comply with the provisions of sections 385.203, 385.204, and 385.210.

385.300. As used in sections 385.300 to 385.312, the following terms shall mean:

- (1) "Administrator", the person, other than a provider, who is responsible for the handling and adjudication of claims under the product service agreement;
- (2) "Consumer", a natural person who buys, other than for the 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;
- (3) "Director", the director of the department of insurance;
- (4) "Maintenance agreement", a contract of limited duration that provides for scheduled maintenance only;
- (5) "Manufacturer", a person that:
 - (a) Manufactures or produces the property and sells the property under its own name or label;
 - (b) Is a wholly owned subsidiary of the person who manufactures or produces the property;
 - (c) Is a corporation which owns one hundred percent of the person who manufactures or produces the property;
 - (d) Does not manufacture or produce the property, but the property is sold under its trade name label;
 - (e) Manufactures or produces the property and the property is sold under the trade name or label of another person; or

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

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

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

29 (8) "Premium", the consideration paid to an insurer for a reimbursement
30 insurance policy;

31 (9) "Product service agreement", a contract or agreement for a specific duration
32 and consideration to perform the repair, replacement, or maintenance of property, or
33 indemnification for repair, replacement, or maintenance, for the operational or structural
34 failure due to a defect in materials, workmanship, or normal wear and tear, with or
35 without additional provisions for incidental payment of indemnity under limited
36 circumstances, including, but not limited to, unavailability of parts, obsolescence, food
37 spoilage, rental, and shipping. Product service agreements may provide for the repair,
38 replacement, or maintenance of property for damage resulting from power surges and
39 accidental damage;

40 (10) "Property", all forms of property except for real property or motor vehicles;

41 (11) "Provider", a person who issues, makes, or directly underwrites a product
42 service agreement, or is contractually obligated to the service agreement holder under the
43 terms of the product service agreement;

44 (12) "Provider fee", the consideration paid for a product service agreement, if any,
45 by a service agreement holder;

46 (13) "Reimbursement insurance policy", a policy of insurance issued to a provider
47 to either provide reimbursement to the provider under the terms of the insured service
48 agreement issued or sold by the provider, or alternatively, in the event of nonperformance
49 by the provider, to pay the product service agreement holder on behalf of the provider all
50 covered contractual obligations incurred by the provider under the terms of the insured
51 service agreement issued or sold by the provider.

52 (14) "Service agreement holder" or "contract holder", a person who is the
53 purchaser or holder of a product service agreement;

54 (15) "Warranty", a warranty made solely by the manufacturer, importer, or seller
55 of the property or services without charge, that is not negotiated or separated from the sale
56 of the product and is incidental to the sale of the product, that guarantees indemnity for

57 defective parts, mechanical or electrical breakdown, labor or other remedial measures,
58 such as repair or replacement of the property or repetition of services.

385.301. 1. It is unlawful for any person to issue, sell, or offer for sale in this state
2 any product service agreement, unless each provider has registered with the director on
3 a form prescribed by the director. Each provider shall pay to the director a fee established
4 by the director, 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 agreements and
7 compliance with sections 385.300 to 385.212.

8 3. A provider or its designee shall provide a copy of the service agreement to the
9 service agreement 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 is contractually obligated to provide service under a
12 service contract shall comply with one of the following:

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

18 (2) Place in trust with the director, a financial security deposit, having a value of
19 not less than five percent of the gross consideration received, less claims paid, on the sale
20 of the service agreement for all service agreements issued and in force, but not less than
21 twenty-five thousand dollars, consisting on 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 (3) Maintain a net worth of one million dollars; and provide the director with a
28 copy of the providers, or if the provider's financial statements are consolidated with those
29 of its parent company, the provider's parent company's most recent form 10-K filed or
30 form 20-F with the Securities and Exchange Commission within the last calendar year, or
31 if the company does not file with the Securities and Exchange Commission, a copy of the
32 company's audited financial statements, which shows a net worth of the provider or its
33 parent company of at least one hundred million dollars. If the provider's parent
34 company's form 10-K, form 20-F, or audited financial statements are filed to meet the

35 provider's financial stability requirement, then the parent company shall agree to
36 guarantee the obligations of the obligor relating to service agreements sold by the provider
37 in this state; or

38 (4) Obtain a reimbursement insurance policy which demonstrates to the satisfaction
39 of the director that one hundred percent of its service agreement obligations to contract
40 holders is covered by such policy and satisfies the requirements of this section. For the
41 purposes of this subsection, the reimbursement insurance policy shall contain the following
42 provisions:

43 (a) In the event that the provider is unable to fulfill its obligations under contracts
44 issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the
45 insurer will pay losses and unearned fees under such plans directly to the contract holder
46 making a claim under the contract;

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

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

53 (5) The reimbursement insurance referenced in subdivision (4) of this subsection
54 shall be obtained from an insurer that is authorized, registered, or otherwise permitted to
55 transact insurance in this state or a surplus lines insurer authorized under the laws of this
56 state and such insurer meets one of the following requirements:

57 (a) Maintain, at the time the policy is filed with the director and continuously
58 thereafter, surplus as to policyholders and paid-in capital of at least fifteen million dollars,
59 and annually file copies of the insurer's financial statements, its national association of
60 insurance commissioner's annual statement, and the actuarial certification, if required and
61 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, surplus as to policyholders and paid-in capital of less than fifteen million
64 dollars, but at least equal to ten million dollars, demonstrate to the satisfaction of the
65 director that the insurer maintains a ratio of net written premiums, wherever written, to
66 surplus as to policyholders and paid-in capital of not greater than three to one, and
67 annually file copies of the insurer's financial statements, its national association of
68 insurance commissioner's annual statement, and the actuarial certification, if required and
69 filed in the insurer's state of domicile.

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

72 **6. Except for compliance with the provider's registration requirement in subsection**
73 **1 of this section, a person marketing, selling, or offering to sell service agreements for a**
74 **provider that is registered under this section is exempt from licensing as a producer under**
75 **the insurance laws of this state.**

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

385.303. 1. Product service agreement marketed, issued, sold, or offered for sale
2 **in the state shall be written in clear, conspicuous, and understandable language, and the**
3 **entire contract shall be printed or typed in easy to read eight-point type or larger and**
4 **disclose the requirements in this section, as applicable.**

5 **2. Product service agreements insured under a reimbursement insurance policy**
6 **under subdivision (4) of subsection 4 of section 385.301 shall contain a statement in**
7 **substantially the following form: "Obligations of the provider under this service**
8 **agreement are guaranteed under a reimbursement insurance policy. If the provider fails**
9 **to pay or provide service on a claim within sixty days after proof of loss has been filed, the**
10 **contract holder is entitled to make a claim directly against the insurance company.".** A
11 **claim against the provider may also include a claim for return of the unearned provider**
12 **fee. The service agreement shall also state the name and address of the insurer.**

13 **3. Product service agreements not insured under a reimbursement insurance policy**
14 **under subdivision (4) of subsection 4 of section 385.301 shall contain a statement in**
15 **substantially the following form: "Obligations of the provider under this service**
16 **agreement are backed only by the full, faith, and credit of the provider (issuer) and are not**
17 **guaranteed under a reimbursement insurance policy.".** A claim against the provider shall
18 **include a claim for return of the unearned provider fee. The product service agreement**
19 **shall also state the name and address of the provider.**

20 **4. Product service agreements shall identify any administrator, the provider**
21 **obligated to perform under the contract, and the service agreement seller, if different than**
22 **the provider or administrator. The identities of such parties are not required to be**
23 **preprinted on the service agreement and may be added to the service agreement prior to**
24 **delivery to the contract holder.**

25 **5. Product service agreements shall state the total purchase price and the terms**
26 **under which the service agreement is sold. The purchase price is not required to be**
27 **preprinted on the service agreement and may be negotiated at the time of sale with the**
28 **service agreement holder.**

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

33 **7. Product service agreements shall state the existence of any deductible amount.**

34 **8. Product service agreements shall specify the merchandise and services to be**
35 **provided and any limitations, exception, or exclusions.**

36 **9. Product service agreements shall state the conditions upon which the use of**
37 **nonoriginal manufacturers' parts, refurbished merchandise, or substitute service may be**
38 **allowed. Conditions stated shall comply with applicable state and federal law.**

39 **10. Product service agreements shall state any terms, restrictions, or conditions**
40 **governing the transferability of the service agreement.**

41 **11. Product service agreements shall state any terms, restrictions, or conditions**
42 **governing termination of the service agreement by the service agreement holder and**
43 **provider.**

44 **12. Product service agreements for which the service agreement holder pays a**
45 **separate, identified consideration shall require every provider to permit the service**
46 **agreement holder to return the contract within at least twenty days of the date of mailing**
47 **of the service agreement, or within at least ten days if the service agreement is delivered**
48 **at the time of sale, or within a longer period permitted under the contract. If no claim has**
49 **been made under the contract, the contract is void and the provider shall refund the**
50 **contract holder the full purchase price of the contract. A ten percent penalty per month**
51 **shall be added to a refund that is not paid within forty-five days of return of the contract**
52 **to the provider. The applicable free-look time periods on service agreements shall only**
53 **apply to the original service agreement purchaser and only if no claim has been made prior**
54 **to its return to the provider.**

55 **13. Product service agreements shall set forth all obligations and duties of the**
56 **service agreement holder, such as the duty to protect against any further damage and**
57 **requirement for certain services and maintenance.**

58 **14. Product service agreements shall clearly state whether or not the service**
59 **agreement provides for or excludes consequential damages, preexisting conditions, or**
60 **events covered under the original manufacturer's warranty.**

61 **15. Product service agreements shall state any limitations on the number or value**
62 **of repairs, replacements, or monetary settlements, as applicable, that will be provided**
63 **during the term of coverage.**

385.304. 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, 2006. Such company using the prohibited**
7 **language in its name shall disclose in its service agreements a statement in substantially the**
8 **following form: "This agreement is not an insurance contract."**

9 **3. It is unlawful for a provider or its representative in its product service**
10 **agreements or literature to make, permit, or cause it 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 product service**
13 **agreement.**

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

17 **5. It is unlawful for a person, such as a manufacturer or retailer, to require the**
18 **purchase of a product service agreement as a condition to the sale of goods or services,**
19 **unless consideration for the service agreement is paid directly by such person and a service**
20 **agreement is furnished without separate consideration to all similarly-situated purchasers**
21 **of the related goods or services.**

385.305. 1. A provider or administrator shall keep accurate accounts, books, and
2 **records concerning transactions regulated under sections 385.300 to 385.312, and only one**
3 **set of such accounts, books, and records is required to be maintained. Such accounts,**
4 **books, or records may be maintained by third parties provided the provisions of this**
5 **section are met.**

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

7 **(1) Copies of each type of service agreement issued;**

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

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

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

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

17 **4. An administrator or provider may keep all records required under sections**
18 **385.300 to 385.312 on a computer disk or other similar technology. If an administrator or**
19 **provider maintains records in other than hard copy, records shall be accessible from a**
20 **computer terminal available to the director and be capable of duplication to legible hard**
21 **copy.**

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

25 **6. An administrator or provider shall make all accounts, books, and records**
26 **concerning transactions regulated under sections 385.300 to 385.312 or other pertinent**
27 **laws available to the director upon request.**

385.306. As applicable, an insurer that issued a reimbursement insurance policy
2 **shall not terminate or fail to renew 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 agreements issued by**
5 **providers prior to the date of the termination.**

385.307. 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 300.312 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 agreement holder**
9 **sums that the provider was obligated to pay under the provisions of the product service**
10 **agreement.**

385.310. 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 **385.312 and protect service agreement 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 385.312 or a rule adopted or order issued under**

6 thereto, or that a person has materially aided, is materially aiding, or is about to materially
7 aid an act, practice, omission, or course of business constituting a violation of sections
8 385.300 to 385.312 or a rule adopted or order issued under thereto, the director may issue
9 such administrative orders as authorized under section 374.046, RSMo. A violation of any
10 of these sections is a level two violation, consisting of a one thousand dollar fine for each
11 violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum
12 for multiple violations.

13 3. If the director believes that a person has engaged, is engaging, or is about to
14 engage in a violation of sections 385.300 to 385.312 or a rule or order issued under thereto,
15 or that person has materially aided, is materially aiding, or is about to material aid an act,
16 practice, omission, or course of business constituting a violation of sections 385.300 to
17 385.312 or a rule adopted or order issued under thereto, the director may maintain a civil
18 action for the following relief:

19 (1) Issue a permanent or temporary injunction, restraining order, or declaratory
20 judgment;

21 (2) Order other appropriate or ancillary relief, which may include:

22 (a) An asset freeze, accounting, writ of attachment, writ of general or specific
23 execution, and appointment of a receiver or conservator, which may be the director, for
24 the defendant or the defendant's assets;

25 (b) Ordering the director to take charge and control of a defendant's property,
26 including accounts in a depository institution, rents, and profits; to collect debts; and to
27 acquire and dispose of property;

28 (c) Imposing a civil penalty or forfeiture;

29 (d) Upon showing financial loss, injury, or harm to identifiable consumers,
30 imposing an order of restitution or disgorgement directed to a person who has engaged in
31 an act, practice, omission, or course of business in violation of the laws or rules relating to
32 insurance;

33 (e) Ordering the payment of prejudgment and post-judgment interest;

34 (f) Ordering reasonable costs of investigation and prosecution; and ordering the
35 payment to the insurance dedicated fund an additional amount equal to ten percent of the
36 total restitution or disgorgement ordered, or such other amount as awarded by the court,
37 which shall be appropriated to an insurance consumer education program administered
38 by the director; or

39 (3) Order such other relief as the court considers necessary or appropriate.

40

41 A violation of any of these sections is a level two violation, consisting of a one thousand
42 dollar fine for each violation, up to an aggregate civil penalty or forfeiture of fifty thousand
43 dollars per annum for multiple violations.

44 4. The enforcement authority of the director under this section is cumulative to any
45 other statutory authority.

385.311. The director may promulgate rules to implement the provisions of sections
2 385.300 to 385.312. Any rule or portion of a rule, as that term is defined in section 536.010,
3 RSMo, that is created under the authority delegated in this section shall become effective
4 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,
5 if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
6 nonseverable and if any of the powers vested with the general assembly pursuant to
7 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
8 are subsequently held unconstitutional, then the grant of rulemaking authority and any
9 rule proposed or adopted after August 28, 2006, shall be invalid and void.

385.312. 1. Sections 385.300 to 385.312 shall not apply to:
2 (1) Warranties;
3 (2) Maintenance agreements;
4 (3) Warranties, service agreements 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 agreements sold or offered for sale to persons other than consumers;
8 (5) Service agreements 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; and
11 (6) Motor vehicle extended service contracts, as defined in section 385.200.
12 2. Manufacturer's service agreements on the manufacturer's products need only
13 comply with the provisions of sections 385.301 to 385.304, 385.307, and 385.310.

[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;

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

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

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

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

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

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

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

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

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

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

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

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

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in

force, but not less than twenty-five thousand dollars, consisting of one of the following:

- a. A surety bond issued by an authorized surety;
- b. Securities of the type eligible for deposit by authorized insurers in this state;
- c. Cash;
- d. A letter of credit issued by a qualified financial institution; or
- e. Another form of security prescribed by regulations issued by the director; or

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

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

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

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

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

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

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

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

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

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

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

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

[407.1212. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar 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 prohibited language in its name prior to August 28, 2004. However, a company using the prohibited language in its name shall conspicuously disclose in its service contract the following statement: "This agreement is not an insurance contract."

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

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

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

4 2. An administrator's, provider's, or other intermediary's accounts, books,
5 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
8 that the name and address have been furnished by the service contract holder;
9 (3) A list of the provider locations where service contracts are marketed,
10 sold, or offered for sale; and
11 (4) Claims files which shall contain at least the dates, amounts, and
12 description of all receipts, claims, and expenditures related to the service
13 contracts.

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

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

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

27 6. An administrator, provider, or other intermediary shall make all
28 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
seek indemnification or subrogation against a provider if the insurer pays or is

9 obligated to pay the service contract holder sums that the provider was obligated
10 to pay pursuant to the provisions of the service contract or under a contractual
11 agreement.]
12

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

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

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

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

18 5. Pending the hearing and the decision by the director, the director shall
19 suspend the effective date of the order. At the hearing, the burden shall be on the
20 director to show why the order issued pursuant to this section is justified. Such
21 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

[407.1225. The director may promulgate rules to effectuate sections
2 407.1200 to 407.1227. Any rule or portion of a rule, as that term is defined in
3 section 536.010, RSMo, that is created under the authority delegated in this
4 section shall become effective only if it complies with and is subject to all of the
5 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
6 This section and chapter 536, RSMo, are nonseverable and if any of the powers

7 vested with the general assembly pursuant to chapter 536, RSMo, to review, to
8 delay the effective date, or to disapprove and annul a rule are subsequently held
9 unconstitutional, then the grant of rulemaking authority and any rule proposed or
10 adopted after August 28, 2004, shall be invalid and void.]

11

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

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

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

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Section B. Section A of this act shall become effective January 1, 2007.

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