FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 221

94TH GENERAL ASSEMBLY

1054L.04T

2007

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407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 385.200, 385.202, 385.204, 385.206, 385.208, 385.210, 385.212, 385.214, 385.216,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

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

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

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

(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, financial institutions

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.

and professional registration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Reimbursement insurance policy", a policy of insurance issued to a provider and under which the insurer agrees, for the benefit of the motor vehicle extended service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the motor vehicle extended 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 motor vehicle extended 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 motor vehicle extended service contract;

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

(16) "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.

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

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

(2) Provided a copy of the motor vehicle extended 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 385.200 to 385.220.

2. All providers of motor vehicle extended 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

motor vehicle extended service contract shall:

(1) Insure all motor vehicle extended 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 motor vehicle extended 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 motor vehicle extended service contract for all motor vehicle extended 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 motor vehicle extended service contracts sold by the provider in this state.

4. Provider fees collected on motor vehicle extended 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 motor vehicle extended service contracts for providers

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

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

385.204. Reimbursement insurance policies insuring motor vehicle extended 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 for which the provider is legally obligated to perform according to the provider's contractual obligations under the motor vehicle extended service contracts issued or sold by the provider.

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

(1) A dealer;

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

(3) A federally insured depository institution;

(4) A lender licensed and defined under sections 367.100 to 367.215, RSMo; or

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

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

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

4. Motor vehicle extended service contracts insured under a reimbursement insurance policy under subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed,

the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the insurer.

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

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

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

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

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

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

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

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

13. Motor vehicle extended service contracts shall state the terms, restrictions, or

conditions governing termination of the service contract by the service contract holder. The provider of the motor vehicle extended service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

14. Motor vehicle extended service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of mailing date of the motor vehicle extended 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 apply only to the original service contract purchaser.

15. Motor vehicle extended 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.

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

385.208. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business, nor shall such provider use 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, 2007. However, a company using the prohibited language in its name shall disclose conspicuously in its motor vehicle extended service contract the following statement: "This agreement is not an insurance contract.".

2. A provider or its representative shall not in its motor vehicle extended 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 motor vehicle extended 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.

385.210. 1. An administrator, provider, or other intermediary shall keep accurate

accounts, books, and records concerning transactions regulated by sections 385.200 to 385.220.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

385.218. The director may promulgate rules to effectuate sections 385.200 to 385.220. 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 pursuant to 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, 2007, shall be invalid and void.

385.220. 1. The provisions of sections 385.200 to 385.220 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 385.206, 385.208, and 385.216.

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) "Person", an individual, partnership, corporation, incorporated or

unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

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

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

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

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

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

(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.

385.302. 1. It is unlawful for any person to issue, sell or offer for sale in this state any service contract, unless each provider has registered with the director on a form

prescribed by the director. Each provider shall pay to the director a fee established by the director by rule, but not to exceed three hundred dollars annually.

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

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

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

(1) (a) Maintain a funded reserve account for its obligations under its contract issues and outstanding in this state. The reserve 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

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

(b) 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 or Form 20-F 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, Form 20-F, 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; or

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

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

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

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

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

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

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

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

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

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

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

c. Annually file copies of the insurer's financial statements, its National Association of Insurance Commissioners annual statement, and the actuarial certification if required

and filed in the insurer's state of domicile.

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

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

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

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

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

3. Service contracts not insured under a reimbursement insurance policy under subdivision (3) of subsection 4 of section 385.302 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a 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 state the name and address of the provider.

4. Service contracts shall identify any administrator, the provider obligated to perform under the contract, and the service contract seller, if different than the provider or administrator. The identities of such parties are not required to be preprinted on the

service contract and may be added to the service contract prior to delivery to the contract holder.

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

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

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

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

9. Service contracts shall state the conditions upon which the use of nonoriginal manufacturers' parts, refurbished merchandise, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

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

11. Service contracts shall state any terms, restrictions, or conditions governing termination of the service agreement by the service contract holder and provider.

12. Service contracts for which the service contract holder pays a separate, identified consideration shall require every provider to permit the service contract holder to return the contract within at least twenty 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 forty-five days of return of the contract to the provider. The applicable free-look time periods on service contracts shall apply only to the original service contract purchaser, and only if no claim has been made prior to its return to the provider.

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 state clearly whether or not the service contract provides

for or excludes consequential damages, preexisting conditions, or events covered under the original manufacturer's warranty.

15. Service contracts shall state any limitations on the number or value of repairs, replacements, or monetary settlements, as applicable, that will be provided during the term of coverage.

385.308. 1. It is unlawful for any provider to 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 any name deceptively similar to the name or description of any insurance or surety corporation, or other provider.

2. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2007. However, a company using the prohibited language in its name shall disclose in its service contracts a statement in substantially the following form: "This contract is not an insurance contract.".

3. It is unlawful for a provider or its representative in its service contracts or literature to 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 product service contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. If the director determines that a person has engaged, is engaging, or is about to engage in a violation of sections 385.300 to 385.320 or a rule adopted or order issued

pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of sections 385.300 to 385.320 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

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

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

385.318. The director may promulgate rules to effectuate sections 385.300 to 385.320. 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 pursuant to 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, 2007, shall be invalid and void.

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

(1) Warranties;

(2) Maintenance agreements;

(3) Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated under the laws of this state;

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

(5) Service contracts sold or offered to nonresidents of this state regardless of whether the entity selling or offering such contracts is located or doing business in this state;

(6) Motor vehicle extended service contracts, as defined in section 385.200; and

(7) Agreements or warranties which provide for the service, repair, replacement,

or maintenance of the systems, appliances, and structural components of residential or commercial real property.

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

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

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

(2) "Consumer", a natural person who buys other than for purposes of resale any motor vehicle 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

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

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

(7) "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and

tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

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

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

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

(11) "Provider", a person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is contractually obligated to provide service under a motor vehicle extended service contract such 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.**]**

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

2. Service contracts insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company.". 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 insurer.

3. Service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and 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.

4. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller,

and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

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

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

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

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

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

10. Service contracts shall state any terms, restrictions, or conditions 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.

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

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

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

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

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

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

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

5. An administrator, provider, or other intermediary discontinuing

business in this state shall maintain its records until it furnishes the director satisfactory proof that it has discharged all obligations to contract holders in this state.

6. An administrator, provider, or other intermediary shall make all accounts, books, and records concerning transactions regulated pursuant to sections 407.1200 to 407.1227 or other pertinent laws available to the director upon request.**]**

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

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

2. The provisions of sections 407.1200 to 407.1227 shall not prevent or 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 obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement.**]**

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

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

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

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

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

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

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

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

[407.1225. The director may promulgate rules to effectuate sections 407.1200 to 407.1227. 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 pursuant to 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, 2004, shall be invalid and void.**]**

[407.1227. 1. The provisions of sections 407.1200 to 407.1224 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 407.1209, 407.1212, and 407.1224.**]**

Section B. The repeal of sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227 and the enactment of sections 385.200, 385.201, 385.203, 385.204, 385.205, 385.207, 385.208, 385.209, 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, shall become effective January 1, 2008.

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