

SECOND REGULAR SESSION

# HOUSE BILL NO. 1976

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GOSEN.

5454H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 385.200, 385.206, 385.300, and 385.306, RSMo, and to enact in lieu thereof four new sections relating to service contracts.

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

Section A. Sections 385.200, 385.206, 385.300, and 385.306, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 385.200, 385.206, 385.300, and 385.306, to read as follows: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) "Business entity", any partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint stock company, reciprocal, syndicate, or any similar entity;

(3) "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;

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

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

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

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.

17 (7) "Manufacturer", any of the following:

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

20 (b) A subsidiary **or affiliate** of the person who manufactures or produces the property;

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

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

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

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

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

34 (9) "Motor vehicle extended service contract" or "service contract", a contract or  
35 agreement for a separately stated consideration and for a specific duration to perform the repair,  
36 replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or  
37 maintenance, for the operational or structural failure due to a defect in materials, workmanship,  
38 or normal wear and tear, with or without additional provision for incidental payment of  
39 indemnity under limited circumstances, including but not limited to towing, rental, and  
40 emergency road service [, but] . **The term shall also include a contract or agreement for a**  
41 **separately stated consideration and for a specific duration that provides for any of the**  
42 **following:**

43 (a) **The repair or replacement of tires or wheels on a motor vehicle damaged as a**  
44 **result of coming into contact with road hazards;**

45 (b) **The removal of dents, dings, or creases on a motor vehicle that can be repaired**  
46 **using the process of paintless dent removal without affecting the existing paint finish and**  
47 **without replacing vehicle body panels, sanding, bonding, or painting;**

48 (c) **The repair of chips or cracks in, or the replacement of, motor vehicle**  
49 **windshields as a result of damage caused by road hazards;**

50 (d) **The replacement of a motor vehicle key or key fob in the event that the key or**  
51 **key fob becomes inoperable or is lost or stolen; and**

52           **(e) If not inconsistent with other provisions of this act, any other services approved**  
53 **by the director.**

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55 **The term [does] shall** not include mechanical breakdown insurance or maintenance agreements;

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

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

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

63           (13) "Producer", any business entity or individual person selling, offering, negotiating,  
64 or soliciting a motor vehicle extended service contract and required to be licensed as a producer  
65 under subsection 1 of section 385.206;

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

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

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

78           (17) **"Road hazard", a hazard encountered while driving a motor vehicle that**  
79 **includes, but is not limited to, potholes, rocks, wood debris, metal parts, glass, plastic,**  
80 **curbs, or composite scraps;**

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

83           [(18)] (19) "Warranty", a warranty made solely by the manufacturer, importer, or seller  
84 of property or services without charge, that is not negotiated or separated from the sale of the  
85 product and is incidental to the sale of the product, that guarantees indemnity for defective parts,  
86 mechanical or electrical breakdown, labor, or other remedial measures, such as repair or  
87 replacement of the property or repetition of services.

385.206. 1. It is unlawful for any person in or from this state to sell, offer, negotiate, or solicit a motor vehicle extended service contract with a consumer, other than the following:

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

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

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

(4) A lender licensed and defined under sections 367.100 to 367.215, along with its authorized employees;

(5) A provider registered with the director and having demonstrated financial responsibility as required in section 385.202, along with its subsidiaries and affiliated entities, and authorized employees of the provider, subsidiary, or affiliated entity;

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

(7) Authorized employees of an administrator under contract to effect coverage, collect provider fees, and settle claims on behalf of a registered provider, if the administrator is licensed as a business entity producer under section 385.207; or

(8) A vehicle owner transferring an existing motor vehicle extended service contract to a subsequent owner of the same vehicle.

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 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

37 following form: "Obligations of the provider under this service contract are backed only by the  
38 full faith and credit of the provider (issuer) and are not guaranteed under a service contract  
39 reimbursement insurance policy." A claim against the provider also shall include a claim for  
40 return of the unearned provider fee. The motor vehicle extended service contract also shall state  
41 conspicuously the name and address of the provider.

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

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

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

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

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

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

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

63 13. Motor vehicle extended service contracts shall state that subsequent to the required  
64 free look period specified in subsection 14 of this section, a service contract holder may cancel  
65 the contract at any time and the provider shall refund to, **or credit to the account of,** the contract  
66 holder one hundred percent of the unearned pro rata provider fee, less any claims paid. A  
67 reasonable administrative fee may be surcharged by the provider in an amount not to exceed fifty  
68 dollars. All terms, restrictions, or conditions governing termination of the service contract by  
69 the service contract holder shall be stated. The provider of the motor vehicle extended service  
70 contract shall mail a written notice to the contract holder within forty-five days of the date of  
71 termination. The written notice required by this subsection may be included with any other  
72 correspondence required by this section.

73           14. Motor vehicle extended service contracts shall contain a free look period that  
74 requires every provider to permit the service contract holder to return the contract to the provider  
75 within at least twenty business days of the mailing date of the motor vehicle extended service  
76 contract or the contract date if the service contract is executed and delivered at the time of sale  
77 or within a longer time period permitted under the contract. If no claim has been made under the  
78 contract and the contract is returned, the contract is void and the provider shall refund to, **or**  
79 **credit to the account of**, the contract holder the full purchase price of the contract. A ten  
80 percent penalty of the amount outstanding per month shall be added to a refund that is not paid  
81 within forty-five days of return of the contract to the provider. If a claim has been made under  
82 the contract during the free look period and the contract is returned, the provider shall refund to,  
83 **or credit to the account of**, the contract holder the full purchase price less any claims that have  
84 been paid. The applicable free-look time periods on service contracts shall apply only to the  
85 original service contract purchaser. **Refunds may be effectuated through a provider or a**  
86 **person that is permitted to sell motor vehicle extended contracts under subsection 1 of this**  
87 **subsection.**

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

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

93           17. The contract requirements of subsections 3 to 16 of this section shall apply to motor  
94 vehicle extended service contracts made with consumers in this state. A violation of subsections  
95 3 to 16 of this section is a level two violation under section 374.049.

96           18. A violation of subsection 1 or 2 of this section is a level three violation under section  
97 374.049.

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

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

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

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

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

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

- 12 (6) "Manufacturer", any of the following:
- 13 (a) A person who manufactures or produces the property and sells the property under the
- 14 person's own name or label;
- 15 (b) A subsidiary **or affiliate** of the person who manufactures or produces the property;
- 16 (c) A person who owns one hundred percent of the entity that manufactures or produces
- 17 the property;
- 18 (d) A person that does not manufacture or produce the property, but the property is sold
- 19 under its trade name label;
- 20 (e) A person who manufactures or produces the property and the property is sold under
- 21 the trade name or label of another person;
- 22 (f) A person who does not manufacture or produce the property but, under a written
- 23 contract, licenses the use of its trade name or label to another person who sells the property under
- 24 the licensor's trade name or label;
- 25 (7) "Nonoriginal manufacturer's parts", replacement parts not made for or by the original
- 26 manufacturer of the property, commonly referred to as after-market parts;
- 27 (8) "Person", an individual, partnership, corporation, incorporated or unincorporated
- 28 association, joint stock company, reciprocal, syndicate, or any similar entity or combination of
- 29 entities acting in concert;
- 30 (9) "Premium", the consideration paid to an insurer for a reimbursement insurance
- 31 policy;
- 32 (10) "Property", all forms of property;
- 33 (11) "Provider", a person who is contractually obligated to the service contract holder
- 34 under the terms of a service contract;
- 35 (12) "Provider fee", the consideration paid for a service contract, if any, by a service
- 36 contract holder;
- 37 (13) "Reimbursement insurance policy", a policy of insurance issued to a provider and
- 38 under which the insurer agrees, for the benefit of the service contract holders, to discharge all of
- 39 the obligations and liabilities of the provider under the terms of the service contracts in the event
- 40 of nonperformance by the provider. All obligations and liabilities include, but are not limited
- 41 to, failure of the provider to perform under the service contract and the return of the unearned
- 42 provider fee in the event of the provider's unwillingness or inability to reimburse the unearned
- 43 provider fee in the event of termination of a service contract;
- 44 (14) "Service contract", a contract for a specific duration and consideration to perform
- 45 the repair, replacement, or maintenance of property or indemnification for repair, replacement,
- 46 or maintenance, for the operational or structural failure of any residential or other property due
- 47 to a defect in materials, workmanship, or normal wear and tear, with or without additional

48 provision for incidental payment of indemnity under limited circumstances, including, but not  
49 limited to, unavailability of parts, obsolescence, food spoilage, rental, and shipping. Service  
50 contracts may provide for the repair, replacement or maintenance of property for damage  
51 resulting from power surges or accidental damage. Service contract providers and administrators  
52 are not deemed to be engaged in the business of insurance in this state;

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

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

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

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

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

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



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

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

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

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

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

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

40           12. Service contracts for which the service contract holder pays a separate, identified  
41 consideration shall require every provider to permit the service contract holder to return the  
42 contract within at least twenty days of the date of mailing of the service contract or within at least  
43 ten days if the service contract is delivered at the time of sale or within a longer time period  
44 permitted under the contract. If no claim has been made under the contract, the contract is void  
45 and the provider shall refund to, **or credit to the account of**, the contract holder the full purchase  
46 price of the contract. A ten percent penalty per month shall be added to a refund that is not paid  
47 within forty-five days of return of the contract to the provider. The applicable free-look time  
48 periods on service contracts shall apply only to the original service contract purchaser, and only  
49 if no claim has been made prior to its return to the provider. **Refunds may be effectuated**  
50 **through the provider or the provider's designee.**

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

54           14. Service contracts shall state clearly whether or not the service contract provides for  
55 or excludes consequential damages, preexisting conditions, or events covered under the original  
56 manufacturer's warranty.

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

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