

SENATE BILL NO. 991

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS MAYER, GRAHAM AND LOUDON.

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

TERRY L. SPIELER, Secretary.

4928S.01I

AN ACT

To repeal sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof twenty-two new sections relating to service contracts, with penalty provisions and 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407.1203, 407.1206, 407.1209, 407.1212, 2 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are 3 repealed and twenty-two new sections enacted in lieu thereof, to be known as 4 sections 379.1050, 379.1052, 379.1054, 379.1056, 379.1058, 379.1060, 379.1062, 5 379.1064, 379.1066, 379.1068, 379.1070, 379.1072, 379.1074, 379.1076, 379.1078, 6 379.1080, 379.1082, 379.1084, 379.1086, 379.1088, 379.1090, and 379.1092, to 7 read as follows:

379.1050. As used in sections 379.1050 to 379.1070, the following 2 terms mean:

3 **(1) "Administrator", the person, other than a provider, who is**
4 **responsible for the administration of the service contracts or the**
5 **service contracts plan or for any filings required by sections 379.1050**
6 **to 379.1070;**

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

11 **(3) "Dealers", any motor vehicle dealer or boat dealer licensed or**
12 **required to be licensed under the provisions of sections 301.550 to**
13 **301.573, RSMo;**

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

14 (4) "Director", the director of the department of insurance;

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

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

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

20 (b) A wholly owned subsidiary of the person who manufactures
21 or produces the property;

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

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

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

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

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

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

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

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

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

57 (12) "Provider", a person who administers, issues, makes,
58 provides, sells, or offers a motor vehicle extended service contract, or
59 who is contractually obligated to the service contract holder under the
60 terms of a motor vehicle extended service contract, such as sellers,
61 administrators, and other intermediaries;

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

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

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

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

 379.1052. 1. Motor vehicle extended service contracts shall not
2 be issued, sold, or offered for sale in this state unless the administrator
3 or its designee has:

4 (1) Provided a receipt for the purchase of the motor vehicle

5 extended service contract to the contract holder at the date of
6 purchase;

7 (2) Provided a copy of the motor vehicle extended service
8 contract to the service contract holder within a reasonable period of
9 time from the date of purchase; and

10 (3) Complied with the provisions of sections 379.1050 to 379.1070.

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

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

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

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

27 (b) Place in trust with the director a financial security deposit,
28 having a value of not less than five percent of the gross consideration
29 received, less claims paid, on the sale of the motor vehicle extended
30 service contract for all motor vehicle extended service contracts issued
31 and in force, but not less than twenty-five thousand dollars, consisting
32 of one of the following:

33 a. A surety bond issued by an authorized surety;

34 b. Securities of the type eligible for deposit by authorized
35 insurers in this state;

36 c. Cash;

37 d. A letter of credit issued by a qualified financial institution; or

38 e. Another form of security prescribed by regulations issued by
39 the director; or

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

41 (b) Upon request, provide the director with a copy of the

42 provider's or, if the provider's financial statements are consolidated
43 with those of its parent company, the provider's parent company's most
44 recent Form 10-K filed with the Securities and Exchange Commission
45 (SEC) within the last calendar year, or if the company does not file with
46 the SEC, a copy of the company's audited financial statements, which
47 shows a net worth of the provider or its parent company of at least one
48 hundred million dollars. If the provider's parent company's Form 10-K
49 or audited financial statements are filed to meet the provider's
50 financial stability requirement, then the parent company shall agree to
51 guarantee the obligations of the obligor relating to motor vehicle
52 extended service contracts sold by the provider in this state.

53 4. Provider fees collected on motor vehicle extended service
54 contracts shall not be subject to premium taxes. Premiums for
55 reimbursement insurance policies shall be subject to applicable
56 premium taxes.

57 5. Except for the registration requirement in subsection 2 of this
58 section, persons marketing, selling, or offering to sell motor vehicle
59 extended service contracts for providers that comply with sections
60 379.1050 to 379.1070 are exempt from this state's licensing
61 requirements.

62 6. Providers complying with the provisions of sections 379.1050
63 to 379.1070 are not required to comply with other provisions of chapter
64 374 or 375, or any other provisions governing insurance companies,
65 except as specifically provided.

379.1054. Reimbursement insurance policies insuring motor
2 vehicle extended service contracts issued, sold, or offered for sale in
3 this state shall conspicuously state that, upon failure of the provider to
4 perform under the contract, such as failure to return the unearned
5 provider fee, the insurer that issued the policy shall pay on behalf of
6 the provider any sums the provider is legally obligated to pay or shall
7 provide the service for which the provider is legally obligated to
8 perform according to the provider's contractual obligations under the
9 motor vehicle extended service contracts issued or sold by the
10 provider.

379.1056. 1. No person, other than a dealer, shall sell, offer for
2 sale, or solicit the sale of a motor vehicle extended service contract to
3 a consumer.

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

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

14 4. Motor vehicle extended service contracts insured under a
15 reimbursement insurance policy under subsection 3 of section 379.1052
16 shall contain a statement in substantially the following form:
17 "Obligations of the provider under this service contract are guaranteed
18 under a service contract reimbursement insurance policy. If the
19 provider fails to pay or provide service on a claim within sixty days
20 after proof of loss has been filed, the contract holder is entitled to make
21 a claim directly against the insurance company." A claim against the
22 provider also shall include a claim for return of the unearned provider
23 fee. The motor vehicle extended service contract also shall state
24 conspicuously the name and address of the insurer.

25 5. Motor vehicle extended service contracts not insured under a
26 reimbursement insurance policy pursuant to subsection 3 of section
27 379.1052 shall contain a statement in substantially the following form:
28 "Obligations of the provider under this service contract are backed only
29 by the full faith and credit of the provider (issuer) and are not
30 guaranteed under a service contract reimbursement insurance policy."
31 A claim against the provider also shall include a claim for return of the
32 unearned provider fee. The motor vehicle extended service contract
33 also shall state conspicuously the name and address of the provider.

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

40 7. Motor vehicle extended service contracts shall state

41 conspicuously the total purchase price and the terms under which the
42 motor vehicle extended service contract is sold. The purchase price is
43 not required to be preprinted on the motor vehicle extended service
44 contract and may be negotiated at the time of sale with the service
45 contract holder.

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

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

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

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

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

63 13. Motor vehicle extended service contracts shall state the
64 terms, restrictions, or conditions governing termination of the service
65 contract by the service contract holder. The provider of the motor
66 vehicle extended service contract shall mail a written notice to the
67 contract holder within fifteen days of the date of termination.

68 14. Motor vehicle extended service contracts shall require every
69 provider to permit the service contract holder to return the contract
70 within at least twenty business days of mailing date of the motor
71 vehicle extended service contract or within at least ten days if the
72 service contract is delivered at the time of sale or within a longer time
73 period permitted under the contract. If no claim has been made under
74 the contract, the contract is void and the provider shall refund to the
75 contract holder the full purchase price of the contract. A ten percent
76 penalty per month shall be added to a refund that is not paid within
77 thirty days of return of the contract to the provider. The applicable

78 free-look time periods on service contracts shall apply only to the
79 original service contract purchaser.

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

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

379.1058. 1. A provider shall not use in its name the words
2 insurance, casualty, guaranty, surety, mutual, or any other words
3 descriptive of the insurance, casualty, guaranty, or surety business, nor
4 shall such provider use a name deceptively similar to the name or
5 description of any insurance or surety corporation, or any other
6 provider. This section shall not apply to a company that was using any
7 of the prohibited language in its name prior to August 28,
8 2004. However, a company using the prohibited language in its name
9 shall disclose conspicuously in its motor vehicle extended service
10 contract the following statement: "This agreement is not an insurance
11 contract."

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

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

379.1060. 1. An administrator, provider, or other intermediary
2 shall keep accurate accounts, books, and records concerning
3 transactions regulated by sections 379.1050 to 379.1070.

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

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

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

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

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

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

20 4. An administrator, provider, or other intermediary may keep
21 all records required under sections 379.1050 to 379.1070 on a computer
22 disk or other similar technology. If an administrator, provider, or
23 other intermediary maintains records in other than hard copy, records
24 shall be accessible from a computer terminal available to the director
25 and be capable of duplication to legible hard copy.

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

30 6. An administrator, provider, or other intermediary shall make
31 all accounts, books, and records concerning transactions regulated
32 pursuant to sections 379.1050 to 379.1070 or other pertinent laws
33 available to the director upon request.

 379.1062. As applicable, an insurer that issued a reimbursement
2 insurance policy shall not terminate the policy until a notice of
3 termination, in a form and time frame prescribed by the director, has
4 been mailed or delivered to the director. The termination of a
5 reimbursement insurance policy shall not reduce the issuer's
6 responsibility for motor vehicle extended service contracts issued by
7 providers prior to the date of the termination.

 379.1064. 1. Providers are considered to be the agent of the
2 insurer that issued the reimbursement insurance policy. In cases
3 where a provider is acting as an administrator and enlists other
4 providers, the provider acting as the administrator shall notify the

5 insurer of the existence and identities of the other providers.

6 2. The provisions of sections 379.1050 to 379.1070 shall not
7 prevent or limit the right of an insurer that issued a reimbursement
8 insurance policy to seek indemnification or subrogation against a
9 provider if the insurer pays or is obligated to pay the service contract
10 holder sums that the provider was obligated to pay under the
11 provisions of the motor vehicle extended service contract or under a
12 contractual agreement.

 379.1066. 1. The director may conduct investigations or
2 examinations of providers, administrators, insurers, or other persons
3 to enforce the provisions of sections 379.1050 to 379.1070 and protect
4 service contract holders in this state.

5 2. If the director determines that a person has engaged, is
6 engaging, or is about to engage in a violation of sections 379.1050 to
7 379.1070 or a rule adopted or order issued pursuant thereto, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, omission or course of business
10 constituting a violation of sections 379.1050 to 379.1070 or a rule
11 adopted or order issued pursuant thereto, the director may issue such
12 administrative orders as authorized under section 374.046. In addition
13 to the relief in section 374.046, RSMo, the director, after hearing, may
14 impose a fine of no more than five thousand dollars per violation.

15 3. If the director believes that a person has engaged, is engaging,
16 or is about to engage in a violation of sections 379.1050 to 379.1070 or
17 a rule adopted or order issued pursuant thereto, or that a person has
18 materially aided, is materially aiding, or is about to materially aid an
19 act, practice, omission or course of business constituting a violation of
20 sections 379.1050 to 379.1070 or a rule adopted or order issued pursuant
21 thereto, the director may maintain a civil action for relief authorized
22 under section 374.046, RSMo.

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

 379.1068. The director may promulgate rules to effectuate
2 sections 379.1050 to 379.1070. Any rule or portion of a rule, as that term
3 is defined in section 536.010, RSMo, that is created under the authority
4 delegated in this section shall become effective only if it complies with
5 and is subject to all of the provisions of chapter 536, RSMo, and, if

6 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
7 are nonseverable and if any of the powers vested with the general
8 assembly pursuant to chapter 536, RSMo, to review, to delay the
9 effective date, or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2006, shall be invalid and void.

379.1070. 1. The provisions of sections 379.1050 to 379.1070 shall
2 not apply to:

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

8 2. Manufacturer's contracts on the manufacturer's products need
9 only comply with the provisions of sections 379.1056, 379.1058, and
10 379.1066.

379.1072. 1. As used in sections 379.1072 to 379.1092, the terms
2 "consumer", "director", "maintenance agreement", "manufacturer", "non-
3 original manufacturer's parts", "person", "premium", and "warranty"
4 shall have the same meaning as provided in section 379.1050.

5 2. As used in sections 379.1072 to 379.1092, the following terms
6 mean:

- 7 (1) "Administrator", the person, other than a provider, who is
8 responsible for the handling and adjudication of claims under the
9 product service agreements;
- 10 (2) "Product service agreement", a contract or agreement for a
11 specific duration and consideration to perform the repair, replacement,
12 or maintenance of property or indemnification for repair, replacement,
13 or maintenance, for the operational or structural failure due to a defect
14 in materials, workmanship, or normal wear and tear, with or without
15 additional provision for incidental payment of indemnity under limited
16 circumstances, including, but not limited to, unavailability of parts,
17 obsolescence, food spoilage, rental, and shipping. Product service
18 agreements may provide for the repair, replacement or maintenance of
19 property for damage resulting from power surges and accidental
20 damage;
- 21 (3) "Property", all forms of property except for real property or

22 motor vehicles;

23 (4) "Provider", a person who issues, makes, or directly
24 underwrites a product service agreement, or is contractually obligated
25 to the service agreement holder under the terms of the product service
26 agreement;

27 (5) "Provider fee", the consideration paid for a product service
28 agreement, if any, by a service agreement holder;

29 (6) "Reimbursement insurance policy", a policy of insurance
30 issued to a provider to either provide reimbursement to the provider
31 under the terms of the insured service agreements issued or sold by the
32 provider, or alternatively, in the event of non-performance by the
33 provider, to pay to product service agreement holders on behalf of the
34 provider all covered contractual obligations incurred by the provider
35 under the terms of the insured service agreements issued or sold by the
36 provider; and

37 (7) "Service agreement holder" or "contract holder", a person who
38 is the purchaser or holder of a product service agreement.

379.1074. 1. It is unlawful for any person to issue, sell or offer
2 for sale in this state any product service agreement, unless each
3 provider has registered with the director on a form prescribed by the
4 director. Each provider shall pay to the director a fee established by
5 the director by rule, but not to exceed three hundred dollars annually.

6 2. A provider may, but is not required to, appoint an
7 administrator or other designee to be responsible for any or all of the
8 administration of service agreements and compliance with sections
9 379.1072 to 379.1092.

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

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

17 (1) (a) Maintain a funded reserve account for its obligations
18 under its contracts issues and outstanding in this state. The reserve
19 shall not be less than forty percent of gross consideration received, less
20 claims paid, on the sale of the service agreement for all in-force

21 **contracts. The reserve account shall be subject to examination and**
22 **review by the director; and**

23 **(b) Place in trust with the director a financial security deposit,**
24 **having a value of not less than five percent of the gross consideration**
25 **received, less claims paid, on the sale of the service agreement for all**
26 **service agreements issued and in force, but not less than twenty-five**
27 **thousand dollars, consisting of one of the following:**

28 **a. A surety bond issued by an authorized surety;**

29 **b. Securities of the type eligible for deposit by authorized**
30 **insurers in this state;**

31 **c. Cash;**

32 **d. A letter of credit issued by a qualified financial institution; or**

33 **e. Another form of security prescribed by regulations issued by**
34 **the director; or**

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

36 **(b) Provide the director with a copy of the provider's or, if the**
37 **provider's financial statements are consolidated with those of its**
38 **parent company, the provider's parent company's most recent Form 10-**
39 **K filed or Form 20-F with the Securities and Exchange Commission**
40 **(SEC) within the last calendar year, or if the company does not file with**
41 **the SEC, a copy of the company's audited financial statements, which**
42 **shows a net worth of the provider or its parent company of at least one**
43 **hundred million dollars. If the provider's parent company's Form 10-K,**
44 **Form 20-F, or audited financial statements are filed to meet the**
45 **provider's financial stability requirement, then the parent company**
46 **shall agree to guarantee the obligations of the obligor relating to**
47 **service agreements sold by the provider in this state; or**

48 **(3) Obtain a reimbursement insurance policy that demonstrates**
49 **to the satisfaction of the director that one hundred percent of its**
50 **service agreement obligations to contract holders is covered by such**
51 **policy and satisfies the requirements of this section. For the purposes**
52 **of this subsection, the reimbursement insurance policy shall contain**
53 **the following provisions:**

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

58 a claim under the contract;

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

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

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

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

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

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

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

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

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

86 c. Annually file copies of the insurer's financial statements, its
87 National Association of Insurance Commissioners annual statement,
88 and the actuarial certification if required and filed in the insurer's
89 state of domicile.

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

93 6. Except for compliance with the provider's registration
94 requirement in subsection 1 of this section, a person marketing, selling,

95 or offering to sell service agreements for a provider that is registered
96 under this section is exempt from licensing as a producer under the
97 insurance laws of this state.

379.1076. Reimbursement insurance policies insuring product
2 service agreements issued, sold or offered for sale in this state shall
3 state that, upon failure of the provider to perform under the contract,
4 including the failure to return the unearned provider fee, the insurer
5 that issued the policy shall pay or perform according to the provider's
6 contractual obligations under the service agreements insured by the
7 insurer.

379.1078. 1. Product service agreements marketed, issued, sold,
2 or offered for sale in this state shall be written in clear, conspicuous,
3 and understandable language, and the entire contract shall be printed
4 or typed in easy-to-read, eight-point type or larger and disclose the
5 requirements in this section, as applicable.

2. Product service agreements insured under a reimbursement
7 insurance policy under subdivision (3) of subsection 4 of section
8 379.1074 shall contain a statement in substantially the following form:
9 "Obligations of the provider under this service agreement are
10 guaranteed under a reimbursement insurance policy. If the provider
11 fails to pay or provide service on a claim within sixty days after proof
12 of loss has been filed, the contract holder is entitled to make a claim
13 directly against the insurance company." A claim against the provider
14 may also include a claim for return of the unearned provider fee. The
15 service agreement also shall state the name and address of the insurer.

3. Product service agreements not insured under a
17 reimbursement insurance policy under subdivision (3) of subsection 4
18 of section 379.1074 shall contain a statement in substantially the
19 following form: "Obligations of the provider under this service
20 agreement are backed only by the full faith and credit of the provider
21 (issuer) and are not guaranteed under a reimbursement insurance
22 policy." A claim against the provider shall also include a claim for
23 return of the unearned provider fee. The product service agreement
24 shall also state the name and address of the provider.

4. Product service agreements shall identify any administrator,
26 the provider obligated to perform under the contract, and the service
27 agreement seller, if different than the provider or administrator. The

28 identities of such parties are not required to be preprinted on the
29 service agreement and may be added to the service agreement prior to
30 delivery to the contract holder.

31 5. Product service agreements shall state the total purchase
32 price and the terms under which the service agreement is sold. The
33 purchase price is not required to be pre-printed on the service
34 agreement and may be negotiated at the time of sale with the service
35 agreement holder.

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

41 7. Product service agreements shall state the existence of any
42 deductible amount.

43 8. Product service agreements shall specify the merchandise and
44 services to be provided and any limitations, exceptions, or exclusions.

45 9. Product service agreements shall state the conditions upon
46 which the use of non-original manufacturers' parts, refurbished
47 merchandise, or substitute service, may be allowed. Conditions stated
48 shall comply with applicable state and federal laws.

49 10. Product service agreements shall state any terms,
50 restrictions, or conditions governing the transferability of the service
51 agreement.

52 11. Product service agreements shall state any terms,
53 restrictions, or conditions governing termination of the service
54 agreement by the service agreement holder and provider.

55 12. Product service agreements for which the service agreement
56 holder pays a separate, identified consideration shall require every
57 provider to permit the service agreement holder to return the contract
58 within at least twenty days of the date of mailing of the service
59 agreement or within at least ten days if the service agreement is
60 delivered at the time of sale or within a longer time period permitted
61 under the contract. If no claim has been made under the contract, the
62 contract is void and the provider shall refund to the contract holder
63 the full purchase price of the contract. A ten percent penalty per
64 month shall be added to a refund that is not paid within forty-five days

65 of return of the contract to the provider. The applicable free-look time
66 periods on service agreements shall apply only to the original service
67 agreement purchaser, and only if no claim has been made prior to its
68 return to the provider.

69 13. Product service agreements shall set forth all of the
70 obligations and duties of the service agreement holder, such as the duty
71 to protect against any further damage and the requirement for certain
72 service and maintenance.

73 14. Product service agreements shall state clearly whether or not
74 the service agreement provides for or excludes consequential damages,
75 preexisting conditions, or events covered under the original
76 manufacturer's warranty.

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

379.1080. 1. It is unlawful for any provider to use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other words
3 descriptive of the insurance, casualty, guaranty, or surety business, or
4 any name deceptively similar to the name or description of any
5 insurance or surety corporation, or other provider.

6 2. This section shall not apply to a company that was using any
7 of the prohibited language in its name prior to August 28,
8 2006. However, a company using the prohibited language in its name
9 shall disclose in its service agreements a statement in substantially the
10 following: "This agreement is not an insurance contract."

11 3. It is unlawful for a provider or its representative in its
12 product service agreements or literature to make, permit, or cause to
13 be made any false or misleading statement, or deliberately omit any
14 material statement that would be considered misleading if omitted, in
15 connection with the sale, offer to sell or advertisement of a product
16 service agreement.

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

21 5. It is unlawful for a person, such as a manufacturer or retailer,
22 to require the purchase of a product service agreement as a condition

23 to the sale of goods or services, unless consideration for the service
24 agreement is paid directly by such person and a service agreement is
25 furnished without separate consideration to all similarly situated
26 purchasers of the related goods or services.

379.1082. 1. A provider or administrator shall keep accurate
2 accounts, books, and records concerning transactions regulated under
3 sections 379.1072 to 379.1092. However, only one set of such accounts,
4 books, and records is required to be maintained and may be maintained
5 by third parties provided the provisions of this section are met.

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

8 (1) Copies of each type of service agreement issued;

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

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

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

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

21 4. An administrator or provider may keep all records required
22 under sections 379.1072 to 379.1092 on a computer disk or other similar
23 technology. If an administrator or provider maintains records in other
24 than hard copy, records shall be accessible from a computer terminal
25 available to the director and be capable of duplication to legible hard
26 copy.

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

31 6. An administrator or provider shall make all accounts, books,
32 and records concerning transactions regulated under sections 379.1072
33 to 379.1092 or other pertinent laws available to the director upon

34 request.

379.1084. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate or non-renew the policy until a notice of termination has been mailed or delivered to the director. The termination or non-renewal of a reimbursement insurance policy shall not reduce the issuer's responsibility for service agreements issued by providers prior to the date of the termination.

379.1086. 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 379.1072 to 379.1092 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 agreement holder sums that the provider was obligated to pay pursuant to the provisions of the product service agreement.

379.1088. 1. The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of sections 379.1072 to 379.1092 and protect service agreement 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 379.1072 to 379.1092 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 379.1072 to 379.1092 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. In addition to the relief in section 374.046, RSMo, the director, after hearing, may impose a fine of no more than five thousand dollars per violation.

3. If the director believes that a person has engaged, is engaging, or is about to engage in a violation of sections 379.1072 to 379.1092 or a rule adopted or order issued pursuant thereto, or that a person has

19 materially aided, is materially aiding, or is about to materially aid an
20 act, practice, omission, or course of business constituting a violation of
21 sections 379.1072 to 379.1092 or a rule adopted or order issued pursuant
22 thereto, the director may maintain a civil action for relief authorized
23 under section 374.046, RSMo.

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

379.1090. The director may promulgate rules to effectuate
2 sections 379.1072 to 379.1092. Any rule or portion of a rule, as that term
3 is defined in section 536.010, RSMo, that is created under the authority
4 delegated in this section shall become effective only if it complies with
5 and is subject to all of the provisions of chapter 536, RSMo, and, if
6 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
7 are nonseverable and if any of the powers vested with the general
8 assembly pursuant to chapter 536, RSMo, to review, to delay the
9 effective date, or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2006, shall be invalid and void.

379.1092. 1. Sections 379.1072 to 379.1092 shall not apply to:

- 2 (1) Warranties;
- 3 (2) Maintenance agreements;
- 4 (3) Warranties, service agreements, or maintenance agreements
5 offered by public utilities on their transmission devices to the extent
6 they are regulated under the laws of this state;
- 7 (4) Service agreements sold or offered for sale to persons other
8 than consumers;
- 9 (5) Service agreements sold or offered to nonresidents of this
10 state regardless of whether the entity selling or offering such contracts
11 is located or doing business in this state; and
- 12 (6) Motor vehicle extended service contracts, as defined in
13 section 379.1050.

14 2. Manufacturer's service agreements on the manufacturer's
15 products need only comply with the provisions of sections 379.1074,
16 379.1080, 379.1086, and 379.1088.

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

- 3 (1) "Administrator", the person who is responsible for the

4 administration of the service contracts or the service contracts plan
5 and who is responsible for any filings required by sections 407.1200
6 to 407.1227;

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

11 (3) "Director", the director of the department of insurance;

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

14 (5) "Manufacturer", a person that:

15 (a) Manufactures or produces the property and sells the
16 property under its own name or label;

17 (b) Is a wholly owned subsidiary of the person who
18 manufactures or produces the property;

19 (c) Is a corporation which owns one hundred percent of the
20 person who manufactures or produces the property;

21 (d) Does not manufacture or produce the property, but the
22 property is sold under its trade name label;

23 (e) Manufactures or produces the property and the property
24 is sold under the trade name or label of another person; or

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

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

35 (7) "Motor vehicle extended service contract" or "service
36 contract", a contract or agreement for a separately stated
37 consideration or for a specific duration to perform the repair,
38 replacement, or maintenance of a motor vehicle or indemnification
39 for repair, replacement, or maintenance, for the operational or

40 structural failure due to a defect in materials, workmanship, or
41 normal wear and tear, with or without additional provision for
42 incidental payment of indemnity under limited circumstances,
43 including, but not limited to, towing, rental, and emergency road
44 service, but does not include mechanical breakdown insurance or
45 maintenance agreements;

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

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

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

55 (11) "Provider", a person who administers, issues, makes,
56 provides, sells, or offers to sell a motor vehicle extended service
57 contract, or who is contractually obligated to provide service under
58 a motor vehicle extended service contract such as sellers,
59 administrators, and other intermediaries;

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

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

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

74 (15) "Warranty", a warranty made solely by the
75 manufacturer, importer, or seller of property or services without

76 charge, that is not negotiated or separated from the sale of the
77 product and is incidental to the sale of the product, that guarantees
78 indemnity for defective parts, mechanical or electrical breakdown,
79 labor, or other remedial measures, such as repair or replacement
80 of the property or repetition of services.]

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

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

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

9 (3) Complied with the provisions of sections 407.1200 to
10 407.1227.

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

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

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

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

27 (b) Place in trust with the director a financial security
28 deposit, having a value of not less than five percent of the gross
29 consideration received, less claims paid, on the sale of the service
30 contract for all service contracts issued and in force, but not less
31 than twenty-five thousand dollars, consisting of one of the

32 following:

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

41 (3) (a) Maintain a net worth of one hundred million dollars;
42 and

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

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

59 5. Except for the registration requirement in subsection 2
60 of this section, persons marketing, selling, or offering to sell service
61 contracts for providers that comply with sections 407.1200 to
62 407.1227 are exempt from this state's licensing requirements.

63 6. Providers complying with the provisions of sections
64 407.1200 to 407.1227 are not required to comply with other
65 provisions of chapter 374 or 375, or any other provisions governing
66 insurance companies, except as specifically provided.]

[407.1206. Reimbursement insurance policies insuring

2 service contracts issued, sold, or offered for sale in this state shall
3 conspicuously state that, upon failure of the provider to perform
4 under the contract, such as failure to return the unearned provider
5 fee, the insurer that issued the policy shall pay on behalf of the
6 provider any sums the provider is legally obligated to pay or shall
7 provide the service which the provider is legally obligated to
8 perform according to the provider's contractual obligations under
9 the service contracts issued or sold by the provider.]

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

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

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

26 4. Service contracts shall identify any administrator, the
27 provider obligated to perform the service under the contract, the
28 service contract seller, and the service contract holder to the extent

29 that the name and address of the service contract holder has been
30 furnished by the service contract holder.

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

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

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

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

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

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

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

57 12. Service contracts shall require every provider to permit
58 the service contract holder to return the contract within at least
59 twenty business days of the date of mailing of the service contract
60 or within at least ten days if the service contract is delivered at the
61 time of sale or within a longer time period permitted under the
62 contract. If no claim has been made under the contract, the
63 contract is void and the provider shall refund to the contract holder
64 the full purchase price of the contract. A ten percent penalty per

65 month shall be added to a refund that is not paid within thirty
66 days of return of the contract to the provider. The applicable
67 free-look time periods on service contracts shall only apply to the
68 original service contract purchaser.

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

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

[407.1212. 1. A provider shall not use in its name the
2 words insurance, casualty, guaranty, surety, mutual, or any other
3 words descriptive of the insurance, casualty, guaranty, or surety
4 business; or a name deceptively similar to the name or description
5 of any insurance or surety corporation, or any other provider. This
6 section shall not apply to a company that was using any of the
7 prohibited language in its name prior to August 28,
8 2004. However, a company using the prohibited language in its
9 name shall conspicuously disclose in its service contract the
10 following statement: "This agreement is not an insurance
11 contract."

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

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

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

4 2. An administrator's, provider's, or other intermediary's

5 accounts, books, and records shall include:

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

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

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

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

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

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

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

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

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

[407.1221. 1. Providers are considered to be the agent of
2 the insurer that issued the reimbursement insurance policy. In
3 cases where a provider is acting as an administrator and enlists

4 other providers, the provider acting as the administrator shall
5 notify the insurer of the existence and identities of the other
6 providers.

7 2. The provisions of sections 407.1200 to 407.1227 shall not
8 prevent or limit the right of an insurer which issued a
9 reimbursement insurance policy to seek indemnification or
10 subrogation against a provider if the insurer pays or is obligated
11 to pay the service contract holder sums that the provider was
12 obligated to pay pursuant to the provisions of the service contract
13 or under a contractual agreement.]

14 [407.1224. 1. The director may conduct investigations or
15 examinations of providers, administrators, insurers, or other
16 persons to enforce the provisions of sections 407.1200 to 407.1227
17 and protect service contract holders in this state.

18 2. The director may take action that is necessary or
19 appropriate to enforce the provisions of sections 407.1200 to
20 407.1227 and the director's regulations and orders, and to protect
21 service contract holders in this state.

22 3. The director may order a service contract provider to
23 cease and desist from committing violations of sections 407.1200 to
24 407.1227 or the director's regulations or orders, may issue an order
25 prohibiting a service contract provider from selling or offering for
26 sale service contracts, or may issue an order imposing a civil
27 penalty, or any combination of these, if the provider has violated
28 the provisions of sections 407.1200 to 407.1227 or the director's
regulations or orders.

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

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

10 6. The director may bring an action in the circuit court of
11 Cole County for an injunction or other appropriate relief to enjoin
12 threatened or existing violations of sections 407.1200 to 407.1227

29 or of the director's orders or regulations. An action filed pursuant
 30 to this section may also seek restitution on behalf of persons
 31 aggrieved by a violation of sections 407.1200 to 407.1227 or orders
 32 or regulations of the director.

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

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

[407.1225. The director may promulgate rules to effectuate
 2 sections 407.1200 to 407.1227. Any rule or portion of a rule, as
 3 that term is defined in section 536.010, RSMo, that is created
 4 under the authority delegated in this section shall become effective
 5 only if it complies with and is subject to all of the provisions of
 6 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
 7 section and chapter 536, RSMo, are nonseverable and if any of the
 8 powers vested with the general assembly pursuant to chapter 536,
 9 RSMo, to review, to delay the effective date, or to disapprove and
 10 annul a rule are subsequently held unconstitutional, then the grant
 11 of rulemaking authority and any rule proposed or adopted after
 12 August 28, 2004, shall be invalid and void.]

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

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

8 2. Manufacturer's contracts on the manufacturer's products
 9 need only comply with the provisions of sections 407.1209,
 10 407.1212, and 407.1224.]

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

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