

FIRST REGULAR SESSION

# SENATE BILL NO. 197

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS LOUDON AND GRAHAM.

Pre-filed December 21, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0507S.011

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## AN ACT

To repeal sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof twenty-two new sections relating to service contracts, with an effective date.

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

Section A. Sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 385.200, 385.202, 385.204, 385.206, 385.208, 385.210, 385.212, 385.214, 385.216, 385.218, 385.220, 385.300, 385.302, 385.304, 385.306, 385.308, 385.310, 385.312, 385.314, 385.316, 385.318, and 385.320, to read as follows:

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

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

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

(3) "Dealers", any motor vehicle dealer or boat dealer licensed or

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

12 required to be licensed under the provisions of sections 301.550 to  
13 301.573, RSMo;

14 (4) "Director", the director of the department of insurance,  
15 financial and professional regulation;

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

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

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

21 (b) A subsidiary of the person who manufactures or produces  
22 the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

          385.202. 1. Motor vehicle extended service contracts shall not be  
2 issued, sold, or offered for sale in this state unless the provider or its  
3 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 385.200 to 385.220.

11          2. All providers of motor vehicle extended service contracts sold  
12 in this state shall file a registration with the director on a form, at a fee  
13 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  
60 385.200 to 385.220 are exempt from this state's licensing requirements.

61           6. Providers complying with the provisions of sections 385.200 to  
62 385.220 are not required to comply with other provisions of chapter 374  
63 or 375, RSMo, or any other provisions governing insurance companies,  
64 except as specifically provided.

          385.204. 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.

          385.206. 1. No person, other than a dealer, manufacturer,  
2 federally insured depository institution, or a lender licensed and  
3 defined under the requirements of sections 367.100 to 367.215, RSMo,

4 shall sell, offer for sale, or solicit the sale of a motor vehicle extended  
5 service contract to a consumer.

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

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

16       4. Motor vehicle extended service contracts insured under a  
17 reimbursement insurance policy under subsection 3 of section 385.202  
18 shall contain a statement in substantially the following form:  
19 "Obligations of the provider under this service contract are guaranteed  
20 under a service contract reimbursement insurance policy. If the  
21 provider fails to pay or provide service on a claim within sixty days  
22 after proof of loss has been filed, the contract holder is entitled to make  
23 a claim directly against the insurance company." A claim against the  
24 provider also shall include a claim for return of the unearned provider  
25 fee. The motor vehicle extended service contract also shall state  
26 conspicuously the name and address of the insurer.

27       5. Motor vehicle extended service contracts not insured under a  
28 reimbursement insurance policy pursuant to subsection 3 of section  
29 385.202 shall contain a statement in substantially the following form:  
30 "Obligations of the provider under this service contract are backed only  
31 by the full faith and credit of the provider (issuer) and are not  
32 guaranteed under a service contract reimbursement insurance policy."  
33 A claim against the provider also shall include a claim for return of the  
34 unearned provider fee. The motor vehicle extended service contract  
35 also shall state conspicuously the name and address of the provider.

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

41 holder.

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

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

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

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

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

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

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

70       14. Motor vehicle extended service contracts shall require every  
71 provider to permit the service contract holder to return the contract  
72 within at least twenty business days of mailing date of the motor  
73 vehicle extended service contract or within at least ten days if the  
74 service contract is delivered at the time of sale or within a longer time  
75 period permitted under the contract. If no claim has been made under  
76 the contract, the contract is void and the provider shall refund to the  
77 contract holder the full purchase price of the contract. A ten percent

78 penalty per month shall be added to a refund that is not paid within  
79 thirty days of return of the contract to the provider. The applicable  
80 free-look time periods on service contracts shall apply only to the  
81 original service contract purchaser.

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

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

385.208. 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.

385.210. 1. An administrator, provider, or other intermediary  
2 shall keep accurate accounts, books, and records concerning  
3 transactions regulated by sections 385.200 to 385.220.

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 385.200 to 385.220 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 385.200 to 385.220 or other pertinent laws available  
33 to the director upon request.

          385.212. 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.

          385.214. 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 385.200 to 385.220 shall not prevent  
7 or limit the right of an insurer that issued a reimbursement insurance  
8 policy to seek indemnification or subrogation against a provider if the  
9 insurer pays or is obligated to pay the service contract holder sums  
10 that the provider was obligated to pay under the provisions of the  
11 motor vehicle extended service contract or under a contractual  
12 agreement.

385.216. 1. The director may conduct investigations or  
2 examinations of providers, administrators, insurers, or other persons  
3 to enforce the provisions of sections 385.200 to 385.220 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 385.200 to  
7 385.220 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 385.200 to 385.220 or a rule adopted  
11 or order issued pursuant thereto, the director may issue such  
12 administrative orders as authorized under section 374.046, RSMo. A  
13 violation of this section is a level two violation under section 374.049,  
14 RSMo.

15 3. If the director believes that a person has engaged, is engaging,  
16 or is about to engage in a violation of sections 385.200 to 385.220 or a  
17 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 385.200 to 385.220 or a rule adopted or order issued pursuant  
21 thereto, the director may maintain a civil action for relief authorized  
22 under section 374.048, RSMo. A violation of this section is a level two  
23 violation under section 374.049, RSMo.

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

385.218. The director may promulgate rules to effectuate sections  
2 385.200 to 385.220. Any rule or portion of a rule, as that term is defined

3 in section 536.010, RSMo, that is created under the authority delegated  
4 in this section shall become effective only if it complies with and is  
5 subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
6 section 536.028, RSMo. This section and chapter 536, RSMo, are  
7 nonseverable and if any of the powers vested with the general assembly  
8 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
9 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, 2007, shall be invalid and void.

385.220. 1. The provisions of sections 385.200 to 385.220 shall not  
2 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 385.204, 385.205, and  
10 385.210.

385.300. 1. As used in sections 385.300 to 385.320, the terms  
2 "consumer", "director", "maintenance agreement", "manufacturer",  
3 "nonoriginal manufacturer's parts", "person", "premium", and "warranty"  
4 shall have the same meaning as provided in section 385.200.

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

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

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

12 (3) "Property", all forms of property;

13 (4) "Provider", a person who issues, makes, or directly  
14 underwrites a service contract, or is contractually obligated to the  
15 service contract holder under the terms of the service contract;

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

18 (6) "Reimbursement insurance policy", a policy of insurance

19 issued to a provider to either provide reimbursement to the provider  
20 under the terms of the insured service contract issued or sold by the  
21 provider, or alternatively, in the event of nonperformance by the  
22 provider, to pay to service contract holders on behalf of the provider  
23 all covered contractual obligations incurred by the provider under the  
24 terms of the insured service contract issued or sold by the provider;  
25 and

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

385.302. 1. It is unlawful for any person to issue, sell or offer for  
2 sale in this state any service contract, unless each provider has  
3 registered with the director on a form prescribed by the director. Each  
4 provider shall pay to the director a fee established by the director by  
5 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 contracts and compliance with sections  
9 385.300 to 385.320.

10 3. A provider or its designee shall provide a copy of the service  
11 contract to the service contract holder within a reasonable period of  
12 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 contract 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 contract 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 contract for all  
26 service contracts 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 contracts 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 contract 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 contracts 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.

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

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

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

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

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

27 contract seller, if different than the provider or administrator. The  
28 identities of such parties are not required to be preprinted on the  
29 service contract and may be added to the service contract prior to  
30 delivery to the contract holder.

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

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

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

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

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

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

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

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



64 contracts shall apply only to the original service contract purchaser,  
65 and only if no claim has been made prior to its return to the provider.

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

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

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

385.308. 1. It is unlawful for any provider to use in its name the  
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 2007. However, a company using the prohibited language in its name  
9 shall disclose in its service contracts a statement in substantially the  
10 following form: "This contract is not an insurance contract."

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

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

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

385.310. 1. A provider or administrator shall keep accurate  
2 accounts, books, and records concerning transactions regulated under  
3 sections 385.300 to 385.320. 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 contract issued;

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

12 (3) A list of the provider locations where service contracts 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 contracts.

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 contract holder for at least three  
20 years after the specified period of coverage had expired.

21 4. An administrator or provider may keep all records required  
22 under sections 385.300 to 385.320 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 385.300  
33 to 385.320 or other pertinent laws available to the director upon  
34 request.

385.312. As applicable, an insurer that issued a reimbursement  
2 insurance policy shall not terminate or non-renew the policy until a  
3 notice of termination has been mailed or delivered to the director. The

4 termination or non-renewal of a reimbursement insurance policy shall  
5 not reduce the issuer's responsibility for service contracts issued by  
6 providers prior to the date of the termination.

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

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

385.316. 1. The director may conduct investigations or  
2 examinations of providers, administrators, insurers, or other persons  
3 to enforce the provisions of sections 385.300 to 385.320 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 385.300 to  
7 385.320 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 385.300 to 385.320 or a rule adopted  
11 or order issued pursuant thereto, the director may issue such  
12 administrative orders as authorized under section 374.046, RSMo. A  
13 violation of this section is a level two violation under section 374.049,  
14 RSMo.

15 3. If the director believes that a person has engaged, is engaging,  
16 or is about to engage in a violation of sections 385.300 to 385.320 or a  
17 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 385.300 to 385.320 or a rule adopted or order issued pursuant  
21 thereto, the director may maintain a civil action for relief authorized  
22 under section 374.048, RSMo.

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

          385.318. The director may promulgate rules to effectuate sections  
2 385.300 to 385.320. Any rule or portion of a rule, as that term is defined  
3 in section 536.010, RSMo, that is created under the authority delegated  
4 in this section shall become effective only if it complies with and is  
5 subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
6 section 536.028, RSMo. This section and chapter 536, RSMo, are  
7 nonseverable and if any of the powers vested with the general assembly  
8 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
9 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, 2007, shall be invalid and void.

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

- 2           (1) Warranties;
- 3           (2) Maintenance agreements;
- 4           (3) Warranties, service contracts, 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 contracts sold or offered for sale to persons other  
8 than consumers;
- 9           (5) Service contracts sold or offered to nonresidents of this state  
10 regardless of whether the entity selling or offering such contracts is  
11 located or doing business in this state;
- 12          (6) Motor vehicle extended service contracts, as defined in  
13 section 385.200; and
- 14          (7) Agreements or warranties which provide for the service,  
15 repair, replacement, or maintenance of the systems, appliances, and  
16 structural components of residential or commercial real property.

17           2. Manufacturer's service contracts on the manufacturer's  
18 products need only comply with the provisions of sections 385.302,  
19 385.308, 385.314, and 385.316.

          [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

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

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

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

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

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

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

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

6. The director may bring an action in the circuit court of

27 Cole County for an injunction or other appropriate relief to enjoin  
28 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 repeal of sections 407.1200, 407.1203, 407.1206, 407.1209,  
2 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227 and  
3 the enactment of sections 385.200, 385.201, 385.203, 385.204, 385.205, 385.207,

4 385.208, 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303,  
5 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, and 385.312, shall become  
6 effective January 1, 2008.

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