

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 811
96TH GENERAL ASSEMBLY

1985L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 385.200, 385.206, and 385.208, RSMo, and to enact in lieu thereof seven new sections relating to motor vehicle extended service contracts, with penalty provisions.

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

Section A. Sections 385.200, 385.206, and 385.208, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 385.200, 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

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

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

(2) **"Business entity", any partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint stock company, reciprocal syndicate, or any similar entity;**

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

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

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

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

[(6)] (7) "Manufacturer", any of the following:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 (a) A person who manufactures or produces the property and sells the property under the
19 person's own name or label;
- 20 (b) A subsidiary of the person who manufacturers or produces the property;
- 21 (c) A person who owns one hundred percent of the entity that manufactures or produces
22 the property;
- 23 (d) A person that does not manufacture or produce the property, but the property is sold
24 under its trade name label;
- 25 (e) A person who manufactures or produces the property and the property is sold under
26 the trade name or label of another person;
- 27 (f) A person who does not manufacture or produce the property but, under a written
28 contract, licenses the use of its trade name or label to another person who sells the property under
29 the licensor's trade name or label;
- 30 [(7)] **(8)** "Mechanical breakdown insurance", a policy, contract, or agreement issued by
31 an authorized insurer who provides for the repair, replacement, or maintenance of a motor
32 vehicle or indemnification for repair, replacement, or service, for the operational or structural
33 failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and
34 tear;
- 35 [(8)] **(9)** "Motor vehicle extended service contract" or "service contract", a contract or
36 agreement for a separately stated consideration and for a specific duration to perform the repair,
37 replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or
38 maintenance, for the operational or structural failure due to a defect in materials, workmanship,
39 or normal wear and tear, with or without additional provision for incidental payment of
40 indemnity under limited circumstances, including but not limited to towing, rental, and
41 emergency road service, but does not include mechanical breakdown insurance or maintenance
42 agreements;
- 43 [(9)] **(10)** "Nonoriginal manufacturer's parts", replacement parts not made for or by the
44 original manufacturer of the property, commonly referred to as after-market parts;
- 45 [(10)] **(11)** "Person", an individual, partnership, corporation, incorporated or
46 unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or
47 combination of entities acting in concert;
- 48 [(11)] **(12)** "Premium", the consideration paid to an insurer for a reimbursement
49 insurance policy;
- 50 **(13) "Producer", any business entity or individual person selling, offering,**
51 **negotiating, or soliciting a motor vehicle extended service contract and required to be**
52 **licensed as a producer under subsection 1 of section 385.206;**

53 [(12)] (14) "Provider", a person who is contractually obligated to the service contract
54 holder under the terms of a motor vehicle extended service contract;

55 [(13)] (15) "Provider fee", the consideration paid for a motor vehicle extended service
56 contract by a service contract holder;

57 [(14)] (16) "Reimbursement insurance policy", a policy of insurance issued to a provider
58 and under which the insurer agrees, for the benefit of the motor vehicle extended service contract
59 holders, to discharge all of the obligations and liabilities of the provider under the terms of the
60 motor vehicle extended service contracts in the event of nonperformance by the provider. All
61 obligations and liabilities include, but are not limited to, failure of the provider to perform under
62 the motor vehicle extended service contract and the return of the unearned provider fee in the
63 event of the provider's unwillingness or inability to reimburse the unearned provider fee in the
64 event of termination of a motor vehicle extended service contract;

65 [(15)] (17) "Service contract holder" or "contract holder", a person who is the purchaser
66 or holder of a motor vehicle extended service contract;

67 [(16)] (18) "Warranty", a warranty made solely by the manufacturer, importer, or seller
68 of property or services without charge, that is not negotiated or separated from the sale of the
69 product and is incidental to the sale of the product, that guarantees indemnity for defective parts,
70 mechanical or electrical breakdown, labor, or other remedial measures, such as repair or
71 replacement of the property or repetition of services.

**385.205. 1. It is unlawful for any provider that has authorized a motor vehicle
2 extended service contract with a consumer to fail to cause delivery to the consumer of a
3 fully executed motor vehicle extended service contract within a commercially feasible time
4 period, but no more than forty-five days from the date the consumer's initial payment is
5 processed. It is the mailing, or actual delivery of the fully executed contract, whichever is
6 earlier, that commences the free look period under subsection 14 of section 385.206.**

7 **2. It is unlawful for any provider, administrator, producer, or any other person
8 who offers to a consumer a motor vehicle extended service contract, to fail, upon request,
9 to cause delivery to the consumer of an unsigned copy of the written contract prior to the
10 time the consumer's initial payment is processed. An offeror may comply with this
11 provision by providing the consumer with the copy or by directing the consumer to a
12 website containing an unsigned copy of the service contract.**

13 **3. A violation of this section is a level two violation under section 374.049.**

385.206. 1. [No person shall directly] **It is unlawful for any person in or from this
2 state to sell, offer [for sale], negotiate, or solicit [the sale of] a motor vehicle extended service
3 contract [to] with a consumer, other than the following:**

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

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

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

10 (4) A lender licensed and defined under sections 367.100 to 367.215, **along with its**
11 **authorized employees; [or]**

12 (5) [An administrator, provider, manufacturer, or person working in concert with an
13 administrator, provider, or manufacturer marketing or selling a motor vehicle extended service
14 contract demonstrating] **A provider registered with the director and having demonstrated**
15 **financial responsibility as [set forth] required in section 385.202, along with its authorized**
16 **employees; or**

17 (6) **A business entity producer or individual producer licensed under section**
18 **385.207;**

19 (7) **A vehicle owner transferring an existing motor vehicle extended service contract**
20 **to a subsequent owner of the same vehicle.**

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

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

29 4. Motor vehicle extended service contracts insured under a reimbursement insurance
30 policy under subsection 3 of section 385.202 shall contain a statement in substantially the
31 following form: "Obligations of the provider under this service contract are guaranteed under
32 a service contract reimbursement insurance policy. If the provider fails to pay or provide service
33 on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to
34 make a claim directly against the insurance company." A claim against the provider also shall
35 include a claim for return of the unearned provider fee. The motor vehicle extended service
36 contract also shall state conspicuously the name and address of the insurer.

37 5. Motor vehicle extended service contracts not insured under a reimbursement insurance
38 policy pursuant to subsection 3 of section 385.202 shall contain a statement in substantially the
39 following form: "Obligations of the provider under this service contract are backed only by the

40 full faith and credit of the provider (issuer) and are not guaranteed under a service contract
41 reimbursement insurance policy." A claim against the provider also shall include a claim for
42 return of the unearned provider fee. The motor vehicle extended service contract also shall state
43 conspicuously the name and address of the provider.

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

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

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

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

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

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

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

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

74 14. Motor vehicle extended service contracts shall [require] **contain a free look period**
75 **that requires** every provider to permit the service contract holder to return the contract **to the**

76 **provider** within at least twenty business days of **the** mailing date of the motor vehicle extended
77 service contract or [within at least ten days if] **the contract date if** the service contract is
78 **executed and** delivered at the time of sale or within a longer time period permitted under the
79 contract. If no claim has been made under the contract **and the contract is returned**, the
80 contract is void and the provider shall refund to the contract holder the full purchase price of the
81 contract. **If a claim has been made under the contract during the free look period and the**
82 **contract is returned, the provider shall refund to the contract holder the full purchase**
83 **price less any claims that have been paid.** A ten percent penalty per month shall be added to
84 a refund that is not paid within thirty days of return of the contract to the provider. The
85 applicable free-look time periods on service contracts shall apply only to the original service
86 contract purchaser.

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

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

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

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

385.207. 1. A business entity, prior to selling, offering, negotiating, or soliciting a
2 **motor vehicle extended service contract with a consumer under subdivision (6) of**
3 **subsection 1 of section 385.206, shall apply for and obtain licensure with the director as a**
4 **business entity producer in accordance with this section.**

5 **2. A business entity applying for a producer license under sections 385.200 to**
6 **385.220 shall make application to the director on an application made available by the**
7 **director and shall pay an initial and renewal licensure fee in an amount to be determined**
8 **by the director, but which shall not exceed one hundred dollars for a business entity.**

9 **3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle**
10 **extended service contract with a consumer under subdivision (6) of subsection 1 of section**
11 **385.206, shall apply for and obtain licensure with the director as an individual producer**
12 **in accordance with this section.**

13 **4. An individual applying for a producer license under sections 385.200 to 385.220**
14 **shall make application to the director on an application made available by the director and**
15 **shall pay an initial and renewal licensure fee in an amount to be determined by the**

16 **director, but which shall not exceed twenty-five dollars for an individual producer. No**
17 **examination of an applicant under this subsection shall be required.**

18 **5. Unless licensure is refused by the director under section 385.209, persons**
19 **applying for license under this section shall be issued a producer license for a term of two**
20 **years. A producer's license shall be renewed biennially upon application for renewal and**
21 **payment of the fee. Such license shall continue in effect unless terminated under**
22 **subsection 6 of this section, or refused, revoked, or suspended under section 385.209.**

23 **6. A producer license issued under this section, if not renewed by the director by**
24 **its expiration date, shall terminate on its expiration date and shall not after that date**
25 **authorize its holder under sections 385.200 to 385.220 to sell, offer, negotiate, or solicit**
26 **motor vehicle extended service contracts.**

27 **7. In connection with a business entity's application as a producer and at renewal,**
28 **the business entity shall provide a list to the director of all locations in this state at which**
29 **it offers motor vehicle extended service contracts.**

30 **8. The director shall adopt rules under section 385.218 relating to licensing and**
31 **practices of persons acting as a producer under this section.**

385.208. 1. [A provider shall not] **It is unlawful for a provider, administrator,**
2 **producer, or any other person selling, offering, negotiating, or soliciting a motor vehicle**
3 **extended service contract to:**

4 **(1) Use in its name the words insurance, casualty, guaranty, warranty, surety, mutual,**
5 **or any other words descriptive of the insurance, casualty, guaranty, or surety business, nor shall**
6 **such [provider] person use a name deceptively similar to the name or description of any**
7 **insurance or surety corporation, or any other provider[. This section shall not apply to a**
8 **company] , provided that this prohibition shall not apply to any provider or administrator**
9 **that was using any of the prohibited language in its name prior to [August 28, 2007. However,**
10 **a company using the prohibited language in its name shall disclose] January 1, 2011, and it**
11 **discloses conspicuously in its motor vehicle extended service contract the following statement:**
12 **"This agreement is not an insurance contract.";**

13 **(2) Directly or indirectly, represent in any manner, whether by telemarketing,**
14 **broadcast marketing, electronic media, written solicitation or any other advertisement,**
15 **offer, or solicitation, a false, deceptive or misleading statement with respect to:**

16 **(a) An affiliation with a motor vehicle manufacturer or dealer;**

17 **(b) Possession of information regarding a motor vehicle owner's current motor**
18 **vehicle manufacturer's original equipment warranty;**

19 **(c) The expiration of a motor vehicle owner's current motor vehicle manufacturer's**
20 **original equipment warranty;**

21 (d) A requirement that such motor vehicle owner register for a new motor vehicle
22 extended service contract with such provider in order to maintain coverage under the
23 motor vehicle owner's current motor vehicle extended service contract or manufacturer's
24 original equipment warranty; or

25 (e) Any term or provision of a motor vehicle extended service contract.

26

27 **A violation of this subsection is a level three violation under section 374.049.**

28 2. [A provider or its representative shall not in its motor vehicle extended service
29 contracts or literature make, permit, or cause to be made any false or misleading statement, or
30 deliberately omit any material statement that would be considered misleading if omitted, in
31 connection with the sale, offer to sell or advertisement of a motor vehicle extended service
32 contract] **It is unlawful for any person, in connection with the offer, sale, solicitation, or**
33 **negotiation of a motor vehicle extended service contract, directly or indirectly to:**

34 (1) **Employ any deception, device, scheme, or artifice to defraud;**

35 (2) **As to any material fact, make or use any misrepresentation, concealment, or**
36 **suppression;**

37 (3) **Engage in any pattern or practice of making any false statement of material**
38 **fact; or**

39 (4) **Engage in any act, practice, or course of business which operates as a fraud or**
40 **deceit upon any person.**

41

42 **A violation of this subsection is a level three violation under section 374.049.**

43 3. **Any person who knowingly employs, uses, or engages in any conduct in violation**
44 **of subsection 2 of this section with the intent to defraud shall be guilty of a felony and,**
45 **upon conviction, may be subject to imprisonment for a term not to exceed ten years. In**
46 **addition to any fine or imprisonment imposed, a court may order restitution to the victim.**

47 4. A person, such as a bank, savings and loan association, lending institution,
48 manufacturer or seller of any product, shall not require the purchase of a service contract as a
49 condition of a loan or a condition for the sale of any property. **A violation of this subsection**
50 **is a level one violation under section 374.049.**

385.209. 1. The director may suspend, revoke, refuse to issue, or refuse to renew
2 **a registration or license under sections 385.200 to 385.220 for any of the following causes,**
3 **if the applicant or licensee has:**

4 (1) **Filed an application for license in this state within the previous ten years, which,**
5 **as of the effective date of the license, was incomplete in any material respect or contained**
6 **incorrect, misleading or untrue information;**

- 7 (2) Violated any provision in sections 385.200 to 385.220, or violated any rule,
8 subpoena, or order of the director;
- 9 (3) Obtained or attempted to obtain a license through material misrepresentation
10 or fraud;
- 11 (4) Misappropriated or converted any moneys or properties received in the course
12 of doing business;
- 13 (5) Been convicted of any felony;
- 14 (6) Used fraudulent, coercive, or dishonest practices, or demonstrated
15 incompetence, untrustworthiness, or financial irresponsibility in the conduct of business
16 in this state or elsewhere;
- 17 (7) Been found in violation of law by a court of competent jurisdiction in an action
18 instituted by any officer of any state or the United States in any matter involving motor
19 vehicle extended service contracts, financial services, investments, credit, insurance,
20 banking, or finance;
- 21 (8) Had a producer license or its equivalent, denied, suspended, or revoked in any
22 other state, province, district, or territory;
- 23 (9) Been refused a license or had a license revoked or suspended by a state or
24 federal regulator of service contracts, financial services, investments, credit, insurance,
25 banking, or finance;
- 26 (10) Signed the name of another to an application for license or to any document
27 related to a motor vehicle extended service contract transaction without authorization;
- 28 (11) Unlawfully acted as a producer without a license;
- 29 (12) Failed to comply with an administrative or court order imposing a child
30 support obligation;
- 31 (13) Failed to comply with any administrative or court order directing payment of
32 state or federal income tax; or
- 33 (14) Has within the last fifteen years been declared insolvent by the director or a
34 motor vehicle extended service contract regulator of another state or has been the subject
35 of a bankruptcy petition.
- 36 2. In the event that the action by the director is not to renew or to deny an
37 application for a license, the director shall notify the applicant or licensee in writing and
38 advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the
39 nonrenewal or denial of the application for a license shall be made under the provisions
40 of chapter 621. Notwithstanding section 621.120, the director shall retain discretion in
41 refusing a license or renewal and such discretion shall not transfer to the administrative
42 hearing commission.

43 **3. The license of a business entity producer may be suspended, revoked, renewal**
44 **refused, or an application may be refused if the director finds that a violation by an**
45 **individual acting under the direction of the business entity was known or should have been**
46 **known by one or more of the partners, officers or managers acting on behalf of the**
47 **business entity and the violation was neither reported to the director nor corrective action**
48 **taken.**

49 **4. The director may also revoke or suspend under subsection 1 of this section any**
50 **license issued by the director where the licensee has failed to renew or has surrendered**
51 **such license.**

52 **5. Every producer licensed under this section shall notify the director of any change**
53 **of address, on forms prescribed by the director, within thirty days of the change. If the**
54 **failure to notify the director of the change of address results in an inability to serve the**
55 **producer with a complaint as provided by sections 621.045 to 621.198, then the director**
56 **may immediately revoke the license of the producer until such time as service may be**
57 **obtained.**

58 **6. A producer shall report to the director any license revocation or civil action**
59 **taken against the producer in another jurisdiction or by another governmental agency in**
60 **this state within thirty days of the final disposition of the matter. This report shall include**
61 **a copy of the order, consent order or other relevant legal documents.**

62 **7. Within thirty days of the initial pretrial hearing date or arraignment, a producer**
63 **shall report to the director any felony proceeding initiated by any state or the United States**
64 **for any violation of law by the producer. The report shall include a copy of the indictment**
65 **or information filed, the order resulting from the hearing and any other relevant legal**
66 **documents.**

385.211. 1. A provider registered to issue motor vehicle extended service contracts
2 **in this state shall maintain a register of business entity producers who are authorized to**
3 **sell, offer, negotiate, or solicit the sale of motor vehicle extended service contracts in this**
4 **state, and shall make such list available for inspection upon request by the director.**
5 **Within thirty days of a provider authorizing a producer to sell, offer, negotiate, or solicit**
6 **motor vehicle extended service contracts, the provider shall enter the name and license**
7 **number of the producer in the company registry of producers.**

8 **2. Within thirty days of a provider terminating a business entity producer's**
9 **appointment to sell, offer, negotiate, or solicit motor vehicle extended service contracts, the**
10 **provider shall update the registry with the effective date of the termination. If a provider**
11 **has possession of information relating to any cause for discipline under section 385.209, the**
12 **provider shall notify the director of this information in writing. The privileges and**

13 **immunities applicable to insurers under section 375.022 shall apply to providers for any**
14 **information reported under this subsection.**

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