

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 132**  
**96TH GENERAL ASSEMBLY**

0896L.07C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 385.200, 385.206, and 385.208, RSMo, and to enact in lieu thereof fourteen new sections relating to certain specialty lines insurance contracts, with penalty provisions, an emergency clause for certain sections, and an effective date for certain sections.

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

Section A. Sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 384.061, 2 385.200, 385.206, and 385.208, RSMo, are repealed and fourteen new sections enacted in lieu 3 thereof, to be known as sections 384.015, 384.017, 384.021, 384.043, 384.051, 384.057, 4 384.061, 385.200, 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as 5 follows:

384.015. As used in sections 384.011 to 384.071, **the following terms shall mean:**

- 2 (1) "Admitted insurer" [means], an insurer licensed to do an insurance business in this 3 state;
- 4 (2) "Capital" [means], funds paid in for stock or other evidence of ownership;
- 5 (3) "Director" [means], the director of the department of insurance, financial institutions 6 and professional registration;
- 7 (4) "Eligible surplus lines insurer" [means], a nonadmitted insurer with which a surplus 8 lines licensee may place surplus lines insurance;
- 9 (5) "**Exempt commercial purchaser**", **any person purchasing commercial insurance** 10 **that, at the time of placement, meets the following requirements:**

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.

11 (a) The person employs or retains a qualified risk manager to negotiate insurance  
12 coverage;

13 (b) The person has paid aggregate nationwide commercial property and casualty  
14 insurance premiums in excess of one hundred thousand dollars in the immediately  
15 preceding twelve months; and

16 (c) a. The person meets at least one of the following criteria:

17 i. The person possesses a net worth in excess of twenty million dollars, as such  
18 amount is adjusted under subparagraph b. of this paragraph;

19 ii. The person generates annual revenues in excess of fifty million dollars, as such  
20 amount is adjusted under subparagraph b. of this paragraph;

21 iii. The person employs more than five hundred full-time or full-time equivalent  
22 employees per individual insured or is a member of an affiliated group employing more  
23 than one thousand employees in the aggregate;

24 iv. The person is a not-for-profit organization or public entity generating annual  
25 budgeted expenditures of at least thirty million dollars, as such amount is adjusted under  
26 subparagraph b. of this paragraph; or

27 v. The person is a municipality with a population in excess of fifty thousand  
28 persons.

29 b. Effective on the fifth January first occurring after the date of the enactment of  
30 United States Public Law 111-203 and each fifth January first occurring thereafter, the  
31 amounts in items i, ii, and iv of subparagraph a. of this paragraph shall be adjusted to  
32 reflect the percentage change for such five-year period in the consumer price index for all  
33 urban consumers published by the United States Bureau of Labor Statistic of the  
34 Department of Labor;

35 (6) "Export" [means] , to place surplus lines insurance with a nonadmitted insurer;

36 (7) "Home state":

37 (a) Except as provided in paragraph (b) of this subdivision, the term "home state"  
38 means, with respect to an insured:

39 a. The state in which an insured maintains its principal place of business or, in the  
40 case of an individual, the individual's principal residence; or

41 b. If one hundred percent of the insured risk is located out of the state referred to  
42 in subparagraph a. of this paragraph, the state to which the greatest percentage of the  
43 insured's taxable premium for that insurance contract is allocated;

44 (b) If more than one insured from an affiliated group are named insureds on a  
45 single nonadmitted insurance contract, the term "home state" means the home state, as

46 **determined under paragraph (a) of this subdivision, of the member of the affiliated group**  
47 **that has the largest percentage of premium attributed to it under such insurance contract;**

48 (c) **The principal place of business is the state where the insured maintains its**  
49 **headquarters and where the insured's high-level officers direct, control and coordinate the**  
50 **business activities of the insured;**

51 [(6)] (8) "Kind of insurance" [means] , one of the types of insurance required to be  
52 reported in the annual statement which must be filed with the director by admitted insurers;

53 (9) **"Nonadmitted insurance", any property and casualty insurance permitted to**  
54 **be placed directly or through a surplus lines licensee with a nonadmitted insurer eligible**  
55 **to accept such insurance;**

56 [(7)] (10) "Nonadmitted insurer" [means] , an insurer not licensed to do an insurance  
57 business in this state, including insurance exchanges authorized under the laws of other states;

58 [(8)] (11) "Producing broker" [means] , the individual broker or agent dealing directly  
59 with the party seeking insurance;

60 (12) **"Qualified risk manager", shall have the same meaning prescribed in the**  
61 **Nonadmitted and Reinsurance Reform Act of 2010 (15 U.S.C. Section 8206);**

62 [(9)] (13) "Surplus" [means] , funds over and above liabilities and capital of the company  
63 for the protection of policyholders;

64 [(10)] (14) "Surplus lines insurance" [means] , any insurance of risks resident, located  
65 or to be performed in this state, permitted to be placed through a surplus lines licensee with a  
66 nonadmitted insurer eligible to accept such insurance, other than reinsurance, [wet marine and  
67 transportation insurance independently procured,] and life and health insurance and annuities;

68 [(11)] (15) "Surplus lines licensee" [means] , a person licensed to place insurance on  
69 risks resident, located or to be performed in this state with nonadmitted insurers eligible to accept  
70 such insurance;

71 [(12)] (16) "Wet marine and transportation insurance" [means]:

72 (a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

73 (b) Insurance of marine builder's risks, marine war risks and contracts of marine  
74 protection and indemnity insurance;

75 (c) Insurance of freights and disbursements pertaining to a subject of insurance coming  
76 within this section; and

77 (d) Insurance of personal property and interests therein, in the course of exportation from  
78 or importation into any country, or in the course of transportation coastwise or on inland waters,  
79 including transportation by land, water or air from point of origin to final destination, in  
80 connection with any and all risks or periods of navigation, transit or transportation, and while

81 being prepared for and while awaiting shipment, and during any delays, transshipment, or  
82 reshipment incident thereto.

384.017. **Surplus lines** insurance may be [procured through] **placed by** a surplus lines  
2 licensee [from nonadmitted insurers] if:

3 (1) Each insurer is an eligible surplus lines insurer;

4 (2) **Each insurer is authorized to write the type of insurance in its domiciliary**  
5 **jurisdiction;**

6 (3) The full amount or kind of insurance is not obtainable from admitted insurers who  
7 are actually transacting in this state the class of insurance required by the insured. Insurance  
8 shall be deemed "obtainable" within the meaning of this section if there is available a market  
9 with admitted insurers that can supply the insured's requirements both as to type of coverage and  
10 as to quality of service. "Type of coverage", as used in this section, refers to hazards covered and  
11 limits of coverage. "Quality of security and service", as used in this section, refers to the rating  
12 by a recognized financial service; and

13 [(3)] (4) All other requirements of sections 384.011 to 384.071 are met.

384.021. [No] **1. A** surplus lines licensee shall **not** place [any] coverage with a  
2 nonadmitted insurer, unless, at the time of placement, [such nonadmitted insurer] **the surplus**  
3 **lines licensee has determined that the nonadmitted insurer:**

4 (1) [Has established satisfactory evidence of good repute and financial integrity;

5 (2) Qualified under one of the following paragraphs:

6 (a)] Has capital and surplus or its equivalent under the laws of its domiciliary  
7 jurisdiction, which equals [this state's] **the greater of the** minimum capital and surplus  
8 requirements under the laws of this state [as defined in sections 379.010 and 379.080; or

9 (b) In the case of Lloyd's or other similar groups including incorporated and individual  
10 unincorporated underwriters, the incorporated members of which shall not be engaged in any  
11 business other than underwriting as a member of the group and shall be subject to the same level  
12 of solvency regulation and control by the group's domiciliary regulator as are the unincorporated  
13 members, maintains a trust fund of not less than fifty million dollars as security to the full  
14 amount thereof for all policyholders and creditors in the United States of each member of the  
15 group, and such trust shall likewise comply with the terms and conditions established in  
16 subdivision (1) of this section for alien insurers; and

17 (c) In the case of an "insurance exchange" created by the laws of individual states,  
18 maintain capital and surplus, or the substantial equivalent thereof, of not less than fifteen million  
19 dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all  
20 insurance exchange policyholders, each individual syndicate shall maintain minimum capital and  
21 surplus, or the substantial equivalent thereof, of not less than one million five hundred thousand

22 dollars. In the event the insurance exchange does not maintain funds for the protection of all  
23 insurance exchange policyholders, each individual syndicate shall meet the minimum capital and  
24 surplus requirements of paragraph (a) of this subdivision;

25 (3) Has caused to be provided to the director a copy of its current annual statement  
26 certified by such insurer, such statement to be provided no more than six months after the close  
27 of the period reported upon and which is either:

28 (a) Filed with and approved by the regulatory authority in the domicile of the  
29 nonadmitted insurer; or

30 (b) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's  
31 domicile; or

32 (c) In the case of an insurance exchange, the statement may be an aggregate combined  
33 statement of all underwriting syndicates operating during the period reported;

34 (4) In addition to meeting the requirements in subdivisions (1) to (3) of this section, an  
35 insurer shall be an eligible surplus lines insurer if it] **or fifteen million dollars, except that the**  
36 **requirements of this subdivision may be satisfied by an insurer's possessing less than the**  
37 **minimum capital and surplus upon an affirmative finding of acceptability by the director**  
38 **provided that the finding shall be based upon such factors as quality of management,**  
39 **capital and surplus of any parent company, company underwriting profit and investment**  
40 **income trends, market availability and company record and reputation within the**  
41 **industry, and in no event shall the director make an affirmative finding of acceptability**  
42 **when the nonadmitted insurer's capital and surplus is less than four million five hundred**  
43 **thousand dollars; and**

44 (2) Appears on the most recent list of eligible surplus lines insurers published by the  
45 director from time to time but at least semiannually[. The director shall be required to place and  
46 maintain the name of any nonadmitted insurer which is eligible and which makes a request to  
47 be on the list of eligible surplus lines insurers] **or on the most recent quarterly listing of alien**  
48 **insurers maintained by the international insurers department of the National Association**  
49 **of Insurance Commissioners.**

50 **2. Notwithstanding any other provision of this chapter or rules adopted to**  
51 **implement the provisions of this chapter, a surplus lines licensee seeking to procure or**  
52 **place nonadmitted insurance in Missouri for an exempt commercial purchaser shall not**  
53 **be required to satisfy any requirement to make a due diligence search to determine**  
54 **whether the full amount or type of insurance sought by such exempt commercial purchaser**  
55 **can be obtained from nonadmitted insurers if:**

56 (1) **The surplus lines licensee procuring or placing the surplus lines insurance has**  
57 **disclosed to the exempt commercial purchaser that such insurance may or may not be**

58 **available from the admitted market that may provide greater protection with more**  
59 **regulatory oversight; and**

60 **(2) The exempt commercial purchaser has subsequently requested in writing the**  
61 **surplus lines licensee to procure or place such insurance from a nonadmitted insurer.**

384.043. 1. No insurance producer shall procure any contract of surplus lines insurance  
2 with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued  
3 by the director.

4 2. The director shall issue a surplus lines license to any qualified holder of a current  
5 resident or nonresident property and casualty insurance producer license but only when the  
6 licensee has:

7 (1) Remitted the one hundred dollar initial fee to the director;

8 (2) Submitted a completed license application on a form supplied by the director; and

9 (3) Passed a qualifying examination approved by the director, except that all holders of  
10 a license prior to July 1, 1987, shall be deemed to have passed such an examination.

11 3. Each surplus lines license shall be renewed for a term of two years on the biennial  
12 anniversary date of issuance and continue in effect until refused, revoked or suspended by the  
13 director in accordance with section 384.065; except that if the biennial renewal fee for the license  
14 is not paid on or before the anniversary date, the license terminates. The biennial renewal fee  
15 is one hundred dollars.

16 **4. Beginning on or before July 1, 2012, the director shall participate in the national**  
17 **insurance producer database of the National Association of Insurance Commissioners, or**  
18 **any other equivalent uniform national database, for the licensure of surplus lines licensees**  
19 **and the renewal of such licenses.**

20 **5. Notwithstanding any other provision of this chapter, a person selling, soliciting,**  
21 **or negotiating nonadmitted insurance with respect to an insured shall be required to obtain**  
22 **or possess a current surplus lines insurance license issued by the director only if this state**  
23 **is such insured's home state.**

384.051. 1. Every insured [in] **whose home state is** this state who procures or causes  
2 to be procured or continues or renews insurance in any surplus lines insurer, or any self-insurer  
3 [in] **whose home state is** this state who so procures or continues with, any surplus lines insurer,  
4 excess of loss, catastrophe or other insurance, [upon a subject of insurance resident, located or  
5 to be performed within this state,] other than insurance procured through a surplus lines broker  
6 pursuant to sections 384.011 to 384.071, shall before March second of the year next succeeding  
7 the year in which the insurance was so procured, continued or renewed, file a written report of  
8 the same with the director on forms prescribed by the director and furnished to such an insured  
9 upon request. The report shall show:

- 10 (1) The name and address of the insured or insureds;
- 11 (2) The name and address of the insurer or insurers;
- 12 (3) The subject of the insurance;
- 13 (4) A general description of the coverage;
- 14 (5) The amount of premium currently charged therefor;
- 15 (6) Such additional pertinent information as may be reasonably requested by the director.

16

17 2. [If any such insurance covers also a subject of insurance resident, located or to be  
18 performed outside this state, for the purposes of this section, a proper pro rata portion of the  
19 entire premium payable for all such insurance shall be allocated as to the subjects of insurance  
20 resident, located or to be performed in this state.

21 3. Any insurance in a surplus lines insurer procured through negotiations or an  
22 application in whole or in part occurring or made within or from within this state, or for which  
23 premiums in whole or in part are remitted directly or indirectly from within this state, shall be  
24 deemed to be insurance procured or continued or renewed in this state within the intent of  
25 subsection 1 of this section.

26 4.] For the general support of the government of this state there is levied upon the  
27 insured or self-insurer who procures insurance pursuant to [subsections 1 and 3] **subsection 1**  
28 of this section a tax at the rate of five percent of the [net] **gross** amount of the premium [in  
29 respect of risks located in this state]. Before April sixteenth of the year next succeeding the year  
30 in which the insurance was so procured, continued or renewed, the insured shall remit to the  
31 department of revenue the amount of the tax. The department of revenue shall notify the director  
32 of the sums collected from each insured or self-insurer.

384.057. 1. Before March second of each year, each surplus lines broker shall report  
2 under oath to the director on forms prescribed by him or her a statement showing, with respect  
3 to the year ending the immediately preceding December thirty-first **for nonadmitted insurance**  
4 **where the home state of the insured is this state:**

5 (1) The gross amounts charged for surplus lines insurance [with respect to risks located  
6 within this state], exclusive of sums collected for the payment of federal, state or local taxes;

7 (2) The amount of net premiums with respect to the insurance. For the purpose of this  
8 section, "net premiums" means the gross amount of charges for surplus lines insurance [with  
9 respect to risks located within this state], exclusive of sums collected for the payment of federal,  
10 state and local taxes, less returned premiums.

11 2. No later than within forty-five days after the end of each calendar quarter ending  
12 March thirty-first, June thirtieth, September thirtieth, and December thirty-first each surplus lines  
13 broker shall report under oath to the director on forms prescribed by him or her a statement

14 showing, with respect to each respective calendar quarter **for nonadmitted insurance where**  
15 **the home state of the insured is this state:**

16 (1) The gross amounts charged for surplus lines insurance [with respect to risks located  
17 within this state], exclusive of sums collected for the payment of federal, state, or local taxes;

18 (2) The amount of net premiums with respect to the insurance. For the purpose of this  
19 section, "net premiums" means the gross amount of charges for surplus lines insurance [with  
20 respect to risks located within this state], exclusive of sums collected for the payment of federal,  
21 state, and local taxes, less returned premiums.

384.061. **1. Notwithstanding any other provision of this chapter or regulation**  
2 **implementing a provision of this chapter**, the five percent tax on net premiums imposed by  
3 sections 384.051 and 384.059 shall be levied **upon and** only upon [risks or portions of risks  
4 which are located within this state. If a surplus lines policy covers risks only partially located  
5 in this state, the tax payable shall be computed on the portions of the premium properly allocable  
6 to that portion of the risks located in this state and no Missouri tax shall be charged for that  
7 portion of risk which is located outside of the state of Missouri] **the entire gross premium for**  
8 **nonadmitted or surplus lines insurance policies for which the home state of the insured is**  
9 **Missouri.**

10 **2. Notwithstanding any other provision of this chapter or regulation implementing**  
11 **a provision of this chapter:**

12 (1) **The placement of nonadmitted insurance shall be subject to the statutory and**  
13 **regulatory requirements of this chapter only if this state is the insured's home state; and**

14 (2) **A surplus lines broker is required to be licensed as a surplus lines licensee under**  
15 **the provisions of this chapter only if this state is the insured's home state.**

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

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

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

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

11 [(3)] (4) "Dealers", any motor vehicle dealer or boat dealer licensed or required to be  
12 licensed under the provisions of sections 301.550 to 301.573;

13            [(4)] (5) "Director", the director of the department of insurance, financial institutions  
14 and professional registration;

15            [(5)] (6) "Maintenance agreement", a contract of limited duration that provides for  
16 scheduled maintenance only;

17            [(6)] (7) "Manufacturer", any of the following:

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

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

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

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

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

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

30            [(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 [(12)] (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 (14) "Provider", a person who is contractually obligated to the service contract holder  
54 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 subsidiaries**  
16 **and affiliated entities, and authorized employees of the provider, subsidiary, or affiliated**  
17 **entity;**

18          (6) **A business entity producer or individual producer licensed under section**  
19 **385.207;**

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

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

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

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

34          4. Motor vehicle extended service contracts insured under a reimbursement insurance  
35 policy under subsection 3 of section 385.202 shall contain a statement in substantially the

36 following form: "Obligations of the provider under this service contract are guaranteed under  
37 a service contract reimbursement insurance policy. If the provider fails to pay or provide service  
38 on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to  
39 make a claim directly against the insurance company." A claim against the provider also shall  
40 include a claim for return of the unearned provider fee. The motor vehicle extended service  
41 contract also shall state conspicuously the name and address of the insurer.

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

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

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

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

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

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

65 11. Motor vehicle extended service contracts shall state the conditions upon which the  
66 use of nonoriginal manufacturer's parts[,] **or parts of a like kind and quality** or substitute  
67 service[,] may be allowed. Conditions stated shall comply with applicable state and federal laws.

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

70 13. Motor vehicle extended service contracts shall state [the] **that subsequent to the**  
71 **required free look period specified in subsection 14 of this section, a service contract holder**

72 **may cancel the contract at any time and the provider shall refund to the contract holder**  
73 **one hundred percent of the unearned pro rata provider fee, less any claims paid. A**  
74 **reasonable administrative fee may be surcharged by the provider in an amount not to**  
75 **exceed fifty dollars. All terms, restrictions, or conditions governing termination of the service**  
76 **contract by the service contract holder shall be stated.** The provider of the motor vehicle  
77 extended service contract shall mail a written notice to the contract holder within [fifteen] **forty-**  
78 **five days of the date of termination. The written notice required by this subsection may be**  
79 **included with any other correspondence required by this section.**

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

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

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

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

101 **18. A violation of subsection 1 or 2 of this section is a level three violation under**  
102 **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. All**  
9 **applications shall include the name of the business entity, the business address or addresses**  
10 **of the business entity, and the type of ownership of the business entity. If a business entity**  
11 **is a partnership or unincorporated association, the application shall contain the name and**  
12 **address of every person or corporation having a financial interest in or owning any part**  
13 **of the business entity. If the business entity is a corporation, the application shall contain**  
14 **the names and addresses of all officers and directors of the corporation. If the business**  
15 **entity is a limited liability company, the application shall contain the names and addresses**  
16 **of all members and officers of the limited liability company, and a list of all persons**  
17 **employed by the business entity and to whom it pays any salary or commission for the sale,**  
18 **solicitation, negotiation, or procurement of any motor vehicle extended service contract.**

19           **3. An individual, prior to selling, offering, negotiating, or soliciting a motor vehicle**  
20 **extended service contract with a consumer under subdivision (6) of subsection 1 of section**  
21 **385.206, shall apply for and obtain licensure with the director as an individual producer**  
22 **in accordance with this section.**

23           **4. An individual applying for a producer license under section 385.200 to 385.220**  
24 **shall make application to the director on an application made available by the director and**  
25 **shall pay an initial and renewal licensure fee in an amount to be determined by the**  
26 **director, but which shall not exceed twenty-five dollars for an individual producer. No**  
27 **examination of an applicant under this subsection shall be required.**

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

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

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

40           **8. The director shall adopt rules under section 385.218 relating to licensing and**  
41 **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 or the applicant's or licensee's subsidiaries or affiliated entities**  
4 **acting on behalf of the applicant or licensee in connection with the applicant's or licensee's**  
5 **motor vehicle extended service contract program has:**

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

9           **(2) Violated any provision in sections 385.200 to 385.220, or violated any rule,**  
10 **subpoena, or order of the director;**

11           **(3) Obtained or attempted to obtain a license through material misrepresentation**  
12 **or fraud;**

13           **(4) Misappropriated or converted any moneys or properties received in the course**  
14 **of doing business;**

15           **(5) Been convicted of any felony;**

16           **(6) Used fraudulent, coercive, or dishonest practices, or demonstrated**  
17 **incompetence, untrustworthiness, or financial irresponsibility in the conduct of business**  
18 **in this state or elsewhere;**

19           **(7) Been found in violation of law by a court of competent jurisdiction in an action**  
20 **instituted by any officer of any state or the United States in any matter involving motor**

21 vehicle extended service contracts, financial services, investments, credit, insurance,  
22 banking, or finance;

23 (8) Had a producer license or its equivalent, denied, suspended, or revoked in any  
24 other state, province, district, or territory;

25 (9) Been refused a license or had a license revoked or suspended by a state or  
26 federal regulator of service contracts, financial services, investments, credit, insurance,  
27 banking, or finance;

28 (10) Signed the name of another to an application for license or to any document  
29 related to a motor vehicle extended service contract transaction without authorization;

30 (11) Unlawfully acted as a producer without a license;

31 (12) Failed to comply with an administrative or court order imposing a child  
32 support obligation;

33 (13) Failed to comply with any administrative or court order directing payment of  
34 state or federal income tax; or

35 (14) Has within the last fifteen years been declared insolvent by the director or a  
36 motor vehicle extended service contract regulator of another state or has been the subject  
37 of a bankruptcy petition.

38 2. In the event that the action by the director is not to renew or to deny an  
39 application for a license, the director shall notify the applicant or licensee in writing and  
40 advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the  
41 nonrenewal or denial of the application for a license shall be made pursuant to the  
42 provisions of chapter 621. Notwithstanding section 621.120, the director shall retain  
43 discretion in refusing a license or renewal and such discretion shall not transfer to the  
44 administrative hearing commission.

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

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

54 5. Every producer licensed under this section shall notify the director of any change  
55 of address, on forms prescribed by the director, within thirty days of the change. If the  
56 failure to notify the director of the change of address results in an inability to serve the

57 producer with a complaint as provided by sections 621.045 to 621.198, then the director  
58 may immediately revoke the license of the producer until such time as service may be  
59 obtained.

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

64 **7. Within thirty days of the initial pretrial hearing date or arraignment, a producer**  
65 **shall report to the director any felony proceeding initiated by any state or the United States**  
66 **for any violation of law by the producer. The report shall include a copy of the indictment**  
67 **or information filed, the order resulting from the hearing and any other relevant legal**  
68 **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.**

Section B. Because immediate action is necessary to ensure the continued application  
2 of Missouri law regulating and taxing surplus lines insurance in accordance with Public Law  
3 111-203, the repeal and reenactment of sections 384.015, 384.017, 384.021, 384.043, 384.051,  
4 384.057, and 384.061 of section A of this act is deemed necessary for the immediate preservation  
5 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act  
6 within the meaning of the constitution, and the repeal and reenactment of sections 384.015,  
7 384.017, 384.021, 384.043, 384.051, 384.057, and 384.061 of section A of this act shall be in  
8 full force and effect upon its passage and approval.

Section C. The repeal and reenactment of sections 385.200, 385.206, and 385.208, and  
2 the enactment of sections 385.205, 385.207, 385.209, and 385.211 of section A of this act shall  
3 become effective January 1, 2012.

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