

SECOND REGULAR SESSION

SENATE BILL NO. 975

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time January 25, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5987S.011

AN ACT

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

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

Section A. Sections 385.200, 385.206, 385.300, and 385.306, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 385.200, 385.206, 385.300, and 385.306, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (c) **The repair of chips or cracks in or the replacement of motor**

55 **vehicle windshields as a result of damage caused by road hazards;**

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

59 **(e) Other services which may be approved by the Director, if not**
60 **inconsistent with other provisions of sections 385.200 to 385.220.**

61 **The term** does not include mechanical breakdown insurance or maintenance
62 agreements;

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

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

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

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

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

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

78 (16) "Reimbursement insurance policy", a policy of insurance issued to a
79 provider and under which the insurer agrees, for the benefit of the motor vehicle
80 extended service contract holders, to discharge all of the obligations and liabilities
81 of the provider under the terms of the motor vehicle extended service contracts
82 in the event of nonperformance by the provider. All obligations and liabilities
83 include, but are not limited to, failure of the provider to perform under the motor
84 vehicle extended service contract and the return of the unearned provider fee in
85 the event of the provider's unwillingness or inability to reimburse the unearned
86 provider fee in the event of termination of a motor vehicle extended service
87 contract;

88 (17) **"Road hazard", a hazard that is encountered while driving a**
89 **motor vehicle and which may include, but is not limited to, potholes,**
90 **rocks, wood debris, metal parts, glass, plastic, curbs, or composite**

91 **scraps;**

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

94 [(18)] (19) "Warranty", a warranty made solely by the manufacturer,
95 importer, or seller of property or services without charge, that is not negotiated
96 or separated from the sale of the product and is incidental to the sale of the
97 product, that guarantees indemnity for defective parts, mechanical or electrical
98 breakdown, labor, or other remedial measures, such as repair or replacement of
99 the property or repetition of services.

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

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

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

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

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

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

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

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

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

25 2. No administrator or provider shall use a dealer as a fronting company,
26 and no dealer shall act as a fronting company. For purposes of this subsection,
27 "fronting company" means a dealer that authorizes a third-party administrator

28 or provider to use its name or business to evade or circumvent the provisions of
29 subsection 1 of this section.

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

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

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

53 6. Motor vehicle extended service contracts shall identify any
54 administrator, the provider obligated to perform the service under the contract,
55 the motor vehicle extended service contract seller, and the service contract holder
56 to the extent that the name and address of the service contract holder has been
57 furnished by the service contract holder.

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

63 8. If prior approval of repair work is required, the motor vehicle extended

64 service contracts shall state conspicuously the procedure for obtaining prior
65 approval and for making a claim, including a toll-free telephone number for claim
66 service and a procedure for obtaining emergency repairs performed outside of
67 normal business hours.

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

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

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

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

79 13. Motor vehicle extended service contracts shall state that subsequent
80 to the required free look period specified in subsection 14 of this section, a service
81 contract holder may cancel the contract at any time and the provider shall refund
82 to the contract holder **or credit the account of the contract holder**, one
83 hundred percent of the unearned pro rata provider fee, less any claims paid. A
84 reasonable administrative fee may be surcharged by the provider in an amount
85 not to exceed fifty dollars. All terms, restrictions, or conditions governing
86 termination of the service contract by the service contract holder shall be
87 stated. The provider of the motor vehicle extended service contract shall mail a
88 written notice to the contract holder within forty-five days of the date of
89 termination. The written notice required by this subsection may be included with
90 any other correspondence required by this section.

91 14. Motor vehicle extended service contracts shall contain a free look
92 period that requires every provider to permit the service contract holder to return
93 the contract to the provider within at least twenty business days of the mailing
94 date of the motor vehicle extended service contract or the contract date if the
95 service contract is executed and delivered at the time of sale or within a longer
96 time period permitted under the contract. If no claim has been made under the
97 contract and the contract is returned, the contract is void and the provider shall
98 refund to the contract holder **or credit the account of the contract holder**,
99 the full purchase price of the contract. A ten percent penalty of the amount

100 outstanding per month shall be added to a refund that is not paid within
101 forty-five days of return of the contract to the provider. If a claim has been made
102 under the contract during the free look period and the contract is returned, the
103 provider shall refund to the contract holder **or credit the account of the**
104 **contract holder**, the full purchase price less any claims that have been
105 paid. The applicable free-look time periods on service contracts shall apply only
106 to the original service contract purchaser. **Refunds may be effectuated**
107 **through a provider or a person that is permitted to sell motor vehicle**
108 **extended contracts pursuant to subsection 1 of this section.**

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

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

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

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

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

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

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

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

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

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

- 15 (6) "Manufacturer", any of the following:
- 16 (a) A person who manufactures or produces the property and sells the
17 property under the person's own name or label;
- 18 (b) A subsidiary **or affiliate** of the person who manufactures or produces
19 the property;
- 20 (c) A person who owns one hundred percent of the entity that
21 manufactures or produces the property;
- 22 (d) A person that does not manufacture or produce the property, but the
23 property is sold under its trade name label;
- 24 (e) A person who manufactures or produces the property and the property
25 is sold under the trade name or label of another person;
- 26 (f) A person who does not manufacture or produce the property but, under
27 a written contract, licenses the use of its trade name or label to another person
28 who sells the property under the licensor's trade name or label;
- 29 (7) "Nonoriginal manufacturer's parts", replacement parts not made for
30 or by the original manufacturer of the property, commonly referred to as
31 after-market parts;
- 32 (8) "Person", an individual, partnership, corporation, incorporated or
33 unincorporated association, joint stock company, reciprocal, syndicate, or any
34 similar entity or combination of entities acting in concert;
- 35 (9) "Premium", the consideration paid to an insurer for a reimbursement
36 insurance policy;
- 37 (10) "Property", all forms of property;
- 38 (11) "Provider", a person who is contractually obligated to the service
39 contract holder under the terms of a service contract;
- 40 (12) "Provider fee", the consideration paid for a service contract, if any,
41 by a service contract holder;
- 42 (13) "Reimbursement insurance policy", a policy of insurance issued to a
43 provider and under which the insurer agrees, for the benefit of the service
44 contract holders, to discharge all of the obligations and liabilities of the provider
45 under the terms of the service contracts in the event of nonperformance by the
46 provider. All obligations and liabilities include, but are not limited to, failure of
47 the provider to perform under the service contract and the return of the unearned
48 provider fee in the event of the provider's unwillingness or inability to reimburse
49 the unearned provider fee in the event of termination of a service contract;
- 50 (14) "Service contract", a contract for a specific duration and consideration

51 to perform the repair, replacement, or maintenance of property or indemnification
52 for repair, replacement, or maintenance, for the operational or structural failure
53 of any residential or other property due to a defect in materials, workmanship,
54 or normal wear and tear, with or without additional provision for incidental
55 payment of indemnity under limited circumstances, including, but not limited to,
56 unavailability of parts, obsolescence, food spoilage, rental, and shipping. Service
57 contracts may provide for the repair, replacement or maintenance of property for
58 damage resulting from power surges or accidental damage. Service contract
59 providers and administrators are not deemed to be engaged in the business of
60 insurance in this state;

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

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

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

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

21 provider.

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

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

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

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

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

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

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

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

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

57 time periods on service contracts shall apply only to the original service contract
58 purchaser, and only if no claim has been made prior to its return to the provider.
59 **Refunds may be effectuated through a provider or a designee.**

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

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

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

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