

FIRST REGULAR SESSION

HOUSE BILL NO. 811

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TALBOY (Sponsor) AND TILLEY (Co-sponsor).

1985L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 375.012, 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Section A. Sections 375.012, 385.206, and 385.208, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 375.012, 385.205, 385.206, 385.207, 385.208, 385.209, and 385.211, to read as follows:

375.012. 1. Sections 375.012 to 375.146 may be cited as the "Insurance Producers Act".

2. As used in sections 375.012 to 375.158, the following words mean:

(1) "Business entity", a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;

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

(3) "Home state", the District of Columbia and any state or territory of the United States in which the insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;

(4) "Insurance", any line of authority, including life, accident and health or sickness, property, casualty, variable life and variable annuity products, personal, credit and any other line of authority permitted by state law or regulation;

(5) "Insurance company" or "insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including health services corporations, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans, unless

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.

17 their exclusion from this definition can be clearly ascertained from the context of the particular
18 statutory section under consideration. Insurer shall also include all companies organized,
19 incorporated or doing business pursuant to the provisions of chapters 375, 376, 377, 378, 379,
20 381 and 384. Trusteed pension plans and profit-sharing plans qualified pursuant to the United
21 States Internal Revenue Code as now or hereafter amended shall not be considered to be
22 insurance companies or insurers within the definition of this section;

23 (6) "Insurance producer" or "producer", a person required to be licensed pursuant to the
24 laws of this state to sell, solicit or negotiate insurance;

25 (7) "License", a document issued by the director authorizing a person to act as an
26 insurance producer for the lines of authority specified in the document. The license itself shall
27 not create any authority, actual, apparent or inherent, in the holder to represent or commit an
28 insurance company;

29 (8) "Limited line credit insurance", credit life, credit disability, credit property, credit
30 unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage
31 disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance
32 offered in connection with an extension of credit that is limited to partially or wholly
33 extinguishing that credit obligation that the director determines should be designated a form of
34 limited line credit insurance;

35 (9) "Limited line credit insurance producer", a person who sells, solicits or negotiates
36 one or more forms of limited line credit insurance coverage through a master, corporate, group
37 or individual policy;

38 (10) "Limited lines insurance", insurance involved in credit transactions, **the line of**
39 **motor vehicle extended service contracts**, insurance contracts issued primarily for covering the
40 risk of travel or any other line of insurance that the director deems necessary to recognize for the
41 purposes of complying with subsection 5 of section 375.017;

42 (11) "Limited lines producer", a person authorized by the director to sell, solicit or
43 negotiate limited lines insurance;

44 (12) "Negotiate", the act of conferring directly with or offering advice directly to a
45 purchaser or prospective purchaser of a particular contract of insurance concerning any of the
46 substantive benefits, terms or conditions of the contract, provided that the person engaged in that
47 act either sells insurance or obtains insurance from insurers for purchasers;

48 (13) "Person", an individual or any business entity;

49 (14) "Personal lines insurance", property and casualty insurance coverage sold to
50 individuals and families for primarily noncommercial purposes;

51 (15) "Sell", to exchange a contract of insurance by any means, for money or its
52 equivalent, on behalf of an insurance company;

53 (16) "Solicit", attempting to sell insurance or asking or urging a person to apply for a
54 particular kind of insurance from a particular company;

55 (17) "Terminate", the cancellation of the relationship between an insurance producer and
56 the insurer or the termination of the authority of the producer to transact the business of
57 insurance;

58 (18) "Uniform business entity application", the current version of the National
59 Association of Insurance Commissioners uniform business entity application for resident and
60 nonresident business entities seeking an insurance producer license;

61 (19) "Uniform application", the current version of the National Association of Insurance
62 Commissioners uniform application for resident and nonresident producer licensing.

63 3. All statutory references to insurance agent or insurance broker shall mean insurance
64 producer, as that term is defined pursuant to subsection 1 of this section.

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

7 **2. It is unlawful for any provider, administrator, or motor vehicle extended service
8 contract producer who offers for sale a motor vehicle extended service contract, to fail to
9 cause delivery to the consumer of an unsigned copy of the service contract offered to the
10 consumer prior to the time of sale upon a request of the same by the consumer. A seller
11 may comply with this provision by providing the consumer with the copy or by directing
12 the consumer to a 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, or solicit the sale of a motor vehicle extended service contract to a
3 consumer, other than the following:**

4 (1) **A motor vehicle dealer licensed under sections 301.550 to 301.573, also holding
5 an organizational credit entity license under section 375.065, along with its employee
6 properly licensed as an individual credit insurance producer, offering, or selling the service
7 contract in connection with the sale of either a motor vehicle or vehicle services;**

8 (2) A manufacturer of motor vehicles, as defined in section 301.010;

9 (3) A federally insured depository institution;

10 (4) A lender licensed and defined under sections 367.100 to 367.215; [or]

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

15 **(6) A business entity producer or individual producer licensed under section**
16 **385.207.**

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

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

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

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

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

44 7. Motor vehicle extended service contracts shall state conspicuously the total purchase
45 price and the terms under which the motor vehicle extended service contract is sold. The

46 purchase price is not required to be preprinted on the motor vehicle extended service contract and
47 may be negotiated at the time of sale with the service contract holder.

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

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

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

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

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

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

70 14. Motor vehicle extended service contracts shall [require] **contain a free look period**
71 **that requires** every provider to permit the service contract holder to return the contract **to the**
72 **provider** within at least twenty business days of **the** mailing date of the motor vehicle extended
73 service contract or [within at least ten days if] **the purchase date if** the service contract is
74 **executed and** delivered at the time of sale or within a longer time period permitted under the
75 contract. If no claim has been made under the contract **and the contract is returned**, the
76 contract is void and the provider shall refund to the contract holder the full purchase price of the
77 contract. **If a claim has been made under the contract during the free look period and the**
78 **contract is returned, the provider shall refund to the contract holder the full purchase**
79 **price less any claims that have been paid.** A ten percent penalty per month shall be added to
80 a refund that is not paid within thirty days of return of the contract to the provider. The

81 applicable free-look time periods on service contracts shall apply only to the original service
82 contract purchaser.

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

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

88 **17. A violation of this section is a level three violation under section 374.049.**

**385.207. 1. A business entity, prior to selling, offering for sale, or soliciting the sale
2 of a motor vehicle extended service contract to a consumer under subdivision (6) of
3 subsection 1 of section 385.206, is required to obtain, as appropriate, either a resident or
4 nonresident business entity producer license under sections 375.012 to 375.018 for the
5 limited line of motor vehicle extended service contracts.**

6 **2. A business entity applying for a resident or nonresident motor vehicle extended
7 service contract producer license shall make application to the director on the uniform
8 application as required.**

9 **3. An individual, prior to selling, offering for sale, or soliciting the sale of a motor
10 vehicle extended service contract to a consumer under subdivision (6) of subsection 1 of
11 section 385.206, is required to obtain, as appropriate, either a resident or nonresident
12 individual producer license under sections 375.012 to 375.018 for either a personal lines
13 property and casualty license or the limited line of motor vehicle extended service
14 contracts.**

15 **4. An individual applying for a resident motor vehicle extended service contract
16 producer license shall make application to the director on the uniform application as
17 required, and shall be exempt from examination under subsection 7 of section 375.016.**

18 **5. An individual applying for a nonresident motor vehicle extended service contract
19 producer license shall make application to the director on the uniform application as
20 required. If the home state of the nonresident does not issue a license for a limited line of
21 motor vehicle extended service contracts, the producer may receive a limited lines producer
22 license in this state if the producer has obtained a personal lines property and casualty
23 license in his home state.**

24 **6. The director shall adopt rules under section 385.218 relating to licensing and
25 practices of persons acting in the capacity of motor vehicle extended service contract
26 producers.**

27 **7. Notwithstanding any provision of sections 375.012 to 375.018, a producer license
28 for the limited line of motor vehicle extended service contracts, if not renewed by the**

29 **director by its expiration date, shall terminate on its expiration date and shall not after that**
30 **date authorize its holder under sections 385.200 to 385.220 to negotiate, sell or offer to sell**
31 **any product in the limited line of motor vehicle extended service contracts.**

385.208. 1. [A provider shall not] **It is unlawful for a provider, administrator, motor**
2 **vehicle extended service contract producer, or any other motor vehicle extended service**
3 **contract seller 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] January 1, 2010, and it disclose**
11 **conspicuously in its motor vehicle extended service contract the following statement: "This**
12 **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, including**
26 **by requesting or processing a consumer's payment information before the material terms**
27 **of the motor vehicle service contract are adequately explained to the consumer and the**
28 **consumer confirms understanding of those terms.**

29

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

31 2. [A provider or its representative shall not in its motor vehicle extended service
32 contracts or literature make, permit, or cause to be made any false or misleading statement, or
33 deliberately omit any material statement that would be considered misleading if omitted, in

34 connection with the sale, offer to sell or advertisement of a motor vehicle extended service
35 contract] **Notwithstanding subsection 6 of section 385.202 and in addition to the other**
36 **prohibitions in this section, sections 375.144 to 375.146 shall apply to the offer, sale,**
37 **solicitation, and negotiation of motor vehicle extended service contracts.**

38 3. A person, such as a bank, savings and loan association, lending institution,
39 manufacturer or seller of any product, shall not require the purchase of a service contract as a
40 condition of a loan or a condition for the sale of any property. **A violation of this subsection**
41 **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 anyone or more of the**
3 **following causes:**

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

7 (2) **Violating any provision in sections 385.200 to 385.220, or violating any rule,**
8 **subpoena, or order of the director or of another motor vehicle extended service contract**
9 **regulator in any other state;**

10 (3) **Obtaining or attempting to obtain a license through material misrepresentation**
11 **or fraud;**

12 (4) **Improperly withholding, misappropriating, or converting any moneys or**
13 **properties received in the course of doing business;**

14 (5) **Misrepresenting the terms of an actual or proposed motor vehicle extended**
15 **service contract or application for such contract;**

16 (6) **Having been convicted of any felony or a crime involving moral turpitude;**

17 (7) **Using fraudulent, coercive, or dishonest practices, or demonstrating**
18 **incompetence, untrustworthiness, or financial irresponsibility in the conduct of business**
19 **in this state or elsewhere;**

20 (8) **Is enjoined or restrained by a court of competent jurisdiction in an action**
21 **instituted by any officer of any state or the United States from engaging in or continuing**
22 **an act, practice or course of business involving motor vehicle extended service contracts,**
23 **financial services, investments, credit, insurance, banking, or finance;**

24 (9) **Is the subject of an order, issued after notice and opportunity for hearing,**
25 **prohibiting a violation of law, or refusing, revoking or suspending a license, by a service**
26 **contract, financial service, investment, credit, insurance, banking, or finance regulator of**
27 **any state or the United States;**

28 **(10) Having a producer license or its equivalent, denied, suspended, or revoked in**
29 **any other state, province, district, or territory;**

30 **(11) Signing the name of another to an application for license or to any document**
31 **related to a motor vehicle extended service contract transaction without authorization;**

32 **(12) Unlawfully acting as a motor vehicle extended service contract producer**
33 **without a license;**

34 **(13) Failing to comply with an administrative or court order imposing a child**
35 **support obligation; or**

36 **(14) Failing to comply with any administrative or court order directing payment**
37 **of state or federal income tax.**

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 licensed as a motor vehicle extended service**
46 **contract producer may be suspended, revoked, renewal refused, or an application may be**
47 **refused if the director finds that a violation by an individual motor vehicle service contract**
48 **was known or should have been known by one or more of the partners, officers or**
49 **managers acting on behalf of the business entity and the violation was neither reported to**
50 **the director nor corrective action taken.**

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

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

60 **6. A motor vehicle extended service contract producer shall report to the director**
61 **any administrative or civil action taken against the producer in another jurisdiction or by**
62 **another governmental agency in this state within thirty days of the final disposition of the**

63 matter. This report shall include a copy of the order, consent order or other relevant legal
64 documents.

65 7. Within thirty days of the initial pretrial hearing date, a motor vehicle extended
66 service contract producer shall report to the director any criminal proceeding initiated by
67 any state or the United States for any violation of law by the producer. The report shall
68 include a copy of the indictment or information filed, the order resulting from the hearing
69 and any other relevant legal documents.

385.211. 1. A provider registered to issue motor vehicle extended service contracts
2 in this state shall maintain a register of appointed motor vehicle extended service contract
3 producers who are authorized to sell, offer for sale, or solicit the sale of motor vehicle
4 extended service contracts in this state. Within thirty days of a provider authorizing a
5 producer to sell, offer for sale, or solicit the sale of motor vehicle extended service
6 contracts, the provider shall enter the name and license number of the producer in the
7 company registry of appointed motor vehicle extended service contract producers.

8 2. Within thirty days of a provider terminating a producer's appointment to sell,
9 offer for sale, or solicit the sale of motor vehicle extended service contracts, the provider
10 shall update the registry with the effective date of the termination. If a provider has
11 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.

15 3. No fee shall be charged for adding a producer to or removing a producer from
16 the registry.