

FEDERATION OF REGULATORY COUNSEL, INC.

**THE NEW MISSOURI MOTOR VEHICLE EXTENDED SERVICE
CONTRACT LEGISLATION**

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The new Missouri Motor Vehicle Extended Service Contract legislation became effective January 1, 2007.¹ The Missouri Department of Insurance, Financial Institutions and Professional Registration ("Missouri Department of Insurance") promulgated rules for the registration by service contract administrators and providers of motor vehicle extended service contracts for their service contracts issued in Missouri² and for faithful performance of a provider's obligations to its contract holders.³

Significant to insurers is a provision which requires service contract providers, as one of three options, to obtain a reimbursement insurance policy issued by an insurer authorized to transact insurance in Missouri.⁴ Such mandatory language creates a larger market for reimbursement insurance coverage in the State of Missouri, an opportunity previously not established.

Should a provider of service contracts possess the necessary capital or assets under the statute, and elect to do so, that provider is permitted to maintain a funded reserve account and to place in trust with the director a financial security deposit.⁵ An inability by a provider to adequately fund a reserve account and to make the required security deposit, or to maintain a net worth of at least one hundred (100) million dollars,⁶ leaves a provider with no other alternative than to purchase a reimbursement insurance policy. The inconvenience of designating certain capital or assets for all business written in Missouri, exclusive of other business written in other states, could also motivate providers to seek coverage in the form of a reimbursement insurance policy.

Missouri reimbursement insurance policies issued for the purpose of providing coverage for service contracts issued, sold, or offered for sale in Missouri are required, under the new law, to conspicuously state that, upon failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.⁷

The Missouri insurance department interprets this new legislation, for the purposes of calculating the amounts to be placed in the funded reserve account and the amounts to be placed as a financial security deposit, to include not only service contracts issued, sold, or offered for sale in Missouri on or after January 1, 2007, but also all service contracts which are issued and *in force*. This necessarily includes service contracts issued prior to January 1, 2007. The Department relies upon the language in the statute which specifically states that when the security deposit option is selected, the provider shall include all service contracts issued and in force; i.e., both before and after January 1, 2007.⁸

However, in application of other sections of the new extended service contract law, where there is no specific language requiring the inclusion of all in force business, the Missouri Department has not applied the law retroactively. For example, the provisions which set out the mandatory language to be included in service contracts are being applied only to new service contracts issued, sold, or offered for sale in Missouri on or after January 1, 2007. In effect, providers should not anticipate being asked to amend service contracts which were issued prior to January 1, 2007; and insurers should not anticipate being asked to issue endorsements on existing and in force Missouri reimbursement insurance policies issued prior to January 1, 2007. However, all new service contracts and new reimbursement insurance policies issued on Missouri Motor Vehicle Extended

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Service Contract business issued on or after January 1, 2007, fall subject to the requirements of the new law.

Reimbursement insurance policies issued on Missouri Motor Vehicle Extended Service Contracts are issued to a provider for the benefit of service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of nonperformance by the provider.⁹ All obligations and liabilities are to include, but are not limited to, failure of the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract.¹⁰

Missouri recognizes a motor vehicle extended service contract or agreement for the repair, replacement, or maintenance of a motor vehicle or for indemnification for repair, replacement, or maintenance, for the operational or structural failure due to defect in materials, workmanship, or normal wear and tear, and can include payment for incidentals such as towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements.¹¹ A mechanical breakdown insurance policy is distinguishable from a reimbursement insurance policy in that a mechanical breakdown insurance policy in Missouri is a policy, contract or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and tear.¹²

A motor vehicle extended service contract is not considered a warranty in Missouri. A warranty is one which is made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.¹³

On or after January 1, 2007, no provider of a motor vehicle extended service contract is authorized to issue, sell or offer for sale in Missouri a motor vehicle extended service contract, unless that provider has properly registered with the Missouri Director of Insurance and complied with all provisions of this new legislation.¹⁴ The definition of a provider of motor vehicle extended service contracts is broad and includes any person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is contractually obligated to provide service under a motor vehicle extended service contract such as sellers, administrators, and other intermediaries.¹⁵

Insurers authorized in Missouri which issue a reimbursement insurance policy to a provider of motor vehicle extended service contracts should be aware that under this new Missouri legislation the provider is considered the agent of the insurer.¹⁶ When a provider is acting as the administrator and does business with other providers, that provider who is acting as administrator is required to notify the insurer of the existence and identities of the other providers.¹⁷

This new legislation specifically permits the insurer under a reimbursement insurance policy to seek indemnification or subrogation against a provider when an insurer pays or is obligated to pay the service contract holder.¹⁸

Financial controls are an important part of the Missouri Motor Vehicle Extended Service Contract law, and the Missouri Department of Insurance has established financial guidelines and oversight of providers by the department similar to the requirements established for an insurance company. These established requirements also can be seen and are parallel with the requirements for an accredited reinsurer in order for a domestic insurance company to take credit for insurance ceded to an otherwise unauthorized reinsurer. The financial strength required of a provider is reflected in the Missouri Motor Vehicle Extended Service Contract law which requires, in lieu of a reimbursement insurance policy, a net worth of one hundred million dollars, or a

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funded reserve account and a security deposit, as referenced above.¹⁹

The provider's security deposit requirement most closely resembles the accredited reinsurance model laws, adopted in Missouri. Each provider shall fund a security deposit, as follows:

1. A surety bond issued by an authorized surety;
2. Securities of the type eligible for deposit by authorized insurers in this state;
3. Cash;
4. A letter of credit issued by a qualified financial institution; or
5. Another form of security prescribed by regulations issued by the director.²⁰

In order to determine whether or not the financial institution is qualified, the regulation specifically cites to the Missouri statute on credit for reinsurance²¹ for the definition of a qualified financial institution acceptable to Missouri.

Provider fees, which are the consideration paid for a service contract in excess of the premium,²² are not subject to premium taxes in Missouri. The premiums paid on the reimbursement insurance policies are subject to all applicable premium taxes as required for insurance policies issued on risks within the State of Missouri.²³

The jurisdiction granted to the Missouri Department of Insurance for enforcement of the new Motor Vehicle Extended Service Contract law is broad. The Missouri Director of Insurance has the authority to take action necessary or appropriate to protect service contract holders in Missouri. The Director may issue cease and desist orders, orders prohibiting the selling or the offering of service contracts, and/or order a civil penalty. The Director may bring an action in the Circuit Court of Cole County, Jefferson City, Missouri, for an injunction or other appropriate relief to enjoin threatened or existing violations. Restitution may be sought. The civil penalty can be up to \$1,000.00 per violation.²⁴

The purpose of the new Missouri Motor Vehicle Extended Service Contract law is to regulate the business of motor vehicle extended service contracts for the protection of the residents of the State of Missouri. Other states have adopted similar legislation as well. Currently before the Missouri legislature is a bill which expands this same legislation into the area of home appliances. As the legislation expands further into additional areas of business in the various states, the opportunity for the issuance of additional policies of insurance also expands. When the water goes up in the pond, all the boats in the pond go up.

Endnotes

1. Section 407.1200 et seq. RSMo. (Supp. 2006)
2. 20 CSR 200-18.010
3. 20 CSR 200-18.020
4. Section 407.1203.3(1) RSMo. (Supp. 2006)
5. Section 407.1203.3(2)(a) and (b) RSMo. (Supp. 2006)
6. 20 CSR 200-020(1)(C)

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7. Section 407.1206 RSMo. (Supp. 2006)
8. Section 407.1203.3(2)(b) RSMO. (Supp. 2006)
9. Section 407.1200(13) RSMo. (Supp. 2006)
10. Id.
11. Section 407.1200(7) RSMo. (Supp. 2006)
12. Section 407.1200(6) RSMo. (Supp. 2006)
13. Section 407.1203.1 RSMo. (Supp. 2006)
14. Section 407.1200(11) RSMo. (Supp. 2006)
15. Section 4 07.1200(15) RSMo. (Supp. 2006)
16. Section 404.1221.1 RSMo. (Supp. 2006)
17. Id.
18. Section 407.1221.2 RSMo. (Supp. 2006)
19. Section 407.1203.3 RSMo. (Supp. 2006)
20. Section 407.1203.3(2)(b)a, b, c, d, and e RSMo. (Supp. 2006)
21. 20 CSR 200-18.020
22. Section 407.1200(12) RSMo. (Supp. 2006)
23. Section 409.1203.4 RSMo. (Supp. 2006)
24. Section 407.1224 RSMo. (Supp. 2006)