LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 944

Introduced by Redfield, 12

Read first time January 10, 2002

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to service contract companies; to amend
sections 44-102.01, 44-2402, 44-3303, and 77-2702.25,
Reissue Revised Statutes of Nebraska, and section 45-336,
Revised Statutes Supplement, 2000; to adopt the Service
Contract Companies Act; to harmonize provisions; to
provide an operative date; and to repeal the original
sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Service Contract Companies Act.

Sec. 2. The purpose of the Service Contract Companies Act is to create a framework within which service contracts, extended warranties, and substantively similar agreements may be issued, be sold, or cover personal property located in this state. Such contracts customarily cover consideration paid in advance for the promise of a future benefit, service, repair, or replacement of consumer products.

Sec. 3. For purposes of the Service Contract Companies Act:

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

(2) Director means Director of Insurance;

(3) Maintenance agreement means a contract of limited duration that provides for scheduled maintenance only;

(4) Manufacturer means a person that (a) manufactures, produces, or markets goods and sells the goods under its own name or label or (b) manufactures or produces goods and the goods are sold under the trade name or label of another person;

(5) Mechanical breakdown insurance means any policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of personal property, or the indemnification for such repair, replacement, or maintenance, for the operational or structural failure of the personal property due to a defect in materials or workmanship or
due to normal wear and tear;

(6) Service contract means any contract or agreement to perform or indemnify for a specific duration the repair, replacement, or maintenance of personal property for operational or structural failure due to a defect in materials or workmanship or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances;

(7) Service contract holder means a person who is the purchaser or holder of a service contract;

(8) Service contract provider means a person, other than the manufacturer, who issues, sells, or provides a service contract and who is contractually obligated to provide service under the service contract;

(9) Service contract reimbursement policy means a policy of insurance providing full reimbursement coverage for all obligations and liabilities under the terms of a service contract issued by the service contract provider; and

(10) Warranty means a warranty made solely by the manufacturer, importer, or seller of personal property or services, without charge, that (a) is not negotiated or separated from the sale of the product, (b) is incidental to the sale of the product, and (c) guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the personal property or repetition of services.

Sec. 4. (1) Each service contract provider who provides service contracts issued, sold, or covering personal property located in this state shall file a registration with the director
on a form prescribed by the director. Such registration shall be
renewed every three years. A service contract provider shall
submit a six-hundred-dollar fee at the time of registration and at
the time of each renewal.

(2) The Service Contract Companies Act does not apply to:
(a) Warranties;
(b) Maintenance agreements; and
(c) Service contracts provided under the Motor Vehicle

(3) A service contract provider shall not be deemed to be
an insurer as defined in section 44-103.

(4) A foreign service contract provider shall not
transact business in this state until such foreign service contract
provider has registered under the act and has either registered
with the Secretary of State to do business in Nebraska or, if it is
not registered to do business in Nebraska, filed with the director
the name and address of a person in this state upon whom service of
process may be served. If a foreign service contract provider
fails to register or file within sixty days after entering into a
Nebraska service contract, the Secretary of State shall act as the
service contract provider's agent for service of process.

Sec. 5. (1) Each service contract provider shall file
evidence of the following with the director as proof of financial
stability:
(a)(i) A surety bond, securities of the type eligible for
deposit by an authorized insurer in this state, cash, or letter of
credit in a form acceptable to the director, which shall have at
all times a value of not less than five percent of the gross annual
consideration from all service contracts issued and in force, but in no case less than twenty-five thousand dollars. Such bond, securities, cash, or letter of credit shall be maintained unimpaired as long as the service contract provider continues to do business in this state. When the service contract provider ceases to do business in this state and has furnished the director proof that it has discharged all its duties to its service contract holders in this state, the director shall release the bond, securities, cash, or letter of credit; and

(ii) A funded reserve account for its liability under its service contracts issued and outstanding in this state. Such reserve account shall at all times be not less than forty percent of (A) all consideration received, less claims paid or (B) the value of in force service contracts, whichever is greater. Such reserve account shall be subject to examination and review by the director upon a request;

(b) Evidence that all of its service contracts are insured through the purchase of a service contract reimbursement policy issued by an insurer authorized to do business in this state or by surplus lines licensee; or

(c) A copy of the service contract provider's financial statement or, if the service contract provider's financial statement is consolidated with those of a parent company or affiliate, the financial statement of the service contract provider's parent company or affiliate, for the most recent calendar year, which shows a net worth of the service contract provider or its parent company or affiliate of at least fifty million dollars. The financial statement shall contain information
relating to the general financial condition, ownership, and management of the service contract provider and its controlling parent company or affiliate, the identity of the controlling parent company or affiliate, if applicable, and any reinsurance agreements covering all or substantially all of the ceded service contracts. A Form 10-K filed with the Securities and Exchange Commission within the last calendar year may be filed to meet the financial stability filing requirement.

(2) If the financial statement of the service contract provider's parent company or affiliate is filed to meet the service contract provider's financial stability requirement, the parent company or affiliate shall agree, on a form prescribed by the director, to guarantee the service contract provider's duties relating to service contracts issued, sold, or covering personal property located in this state.

(3) The director may, upon review of the business activities of a service contract provider, determine that the amounts set forth in this section are inadequate for protection of the public and may require additional assurances of financial stability.

Sec. 6. For the purposes of determining the service contract provider's financial stability and protecting consumer interests, the director may conduct an examination of a service contract provider concerning service contracts issued, sold, or covering personal property located in this state to determine compliance with the Service Contract Companies Act.

Sec. 7. (1) Each service contract shall be written in clear, understandable language and printed in at least ten-point
type and shall include:

(a) The identity of the service contract provider and the service contract seller;

(b) The total purchase price of the service contract, stated separately from the price of the goods purchased;

(c) The existence of any deductible amount;

(d) The procedures to file a claim, including, but not limited to, the procedures for obtaining prior approval for repair work, the telephone number if prior approval is necessary for claim service;

(e) The terms for transferability of the service contract;

(f) The prerequisites for early cancellation;

(g) The terms, restrictions, or conditions governing termination of the service contract by the service contract holder;

(h) The duties of the service contract holder; and

(i) If no claim has been made under the service contract, the authorization of the original service contract holder to return the service contract within twenty days after receipt of the service contract and obtain a refund of the full purchase price of the service contract.

(2) Every service contract reimbursement policy insuring service contracts issued, sold, or covering personal property located in this state shall conspicuously state that upon the failure of the service contract provider to perform under the service contract, the insurer shall pay any sum the service contract provider is legally obligated to pay and shall provide the service the service contract provider is legally obligated to
perform according to the service contract.

Sec. 8. (1) A service contract provider is considered to be the agent of an insurer which issued a service contract reimbursement policy and shall act as a fiduciary in regard to premiums, return of premiums, or other sums of money received. Nothing in the Service Contract Companies Act shall be construed to subject a service contract provider to the licensure requirements of the Department of Insurance for insurance agents in this state.

(2) A service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under the act for at least three years after the specified period of coverage has expired. Records required by the act may be maintained solely in an electronic, optical, or other storage medium as long as the records are capable of being accurately reproduced upon request. These accounts, books, and records shall include:

(a) Copies of each type of service contract in use;

(b) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;

(c) A list of the locations where service contracts are issued or sold; and

(d) Claims files which contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the service contracts.

Sec. 9. (1) A service contract provider shall not use in its name, contracts, or literature:

(a) The words insurance, casualty, surety, or mutual; or
(b) A name deceptively similar to the name or description of any insurance or surety corporation or any other service contract provider registered or licensed by the Department of Insurance to do business in this state.

(2) A service contract provider or its agent shall not advertise, print, display, publish, distribute, or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of a service contract or (b) cause or permit the foregoing to occur.

(3) Each service contract provider shall provide or mail a copy of the service contract to the customer within fourteen days after the date of sale, except if the service contract provider makes a copy of the service contract terms and conditions available to the consumer at the point of sale.

(4) Nothing in the Service Contract Companies Act shall be construed to impair or in any way affect any rule of law applicable or governing service contracts not otherwise subject to the act.

Sec. 10. A service contract issued, sold, or covering personal property located in this state shall not provide that:

(1) The consumer is not a party to the service contract;

(2) The service contract provider has no liability to the consumer;

(3) The consumer does not have the right to bring an action to enforce the terms of the service contract or otherwise challenge the denial of a claim which the consumer believes is wrongful, subject to any alternative dispute resolution procedure
authorized by the service contract and by law; or

(4) Any civil action brought in connection with the service contract must be brought in the courts of a jurisdiction outside Nebraska.

Sec. 11. (1) The director, after proper notice and opportunity for hearing in accordance with the Administrative Procedure Act, may take action to enforce the Service Contract Companies Act. If the director determines that the service contract provider has violated the act, the director may revoke or suspend the registration of the service contract provider or order the service contract provider to cease and desist from selling or offering for sale service contracts in Nebraska.

(2) Upon the failure of a service contract provider to obey an order of the director, the director may notify the Attorney General who shall represent the director in any court action to enforce the act. In addition, the Attorney General may file lawsuits on behalf of service contract holders seeking restitution from a service contract provider or its agent for any violation of the act.

(3) In addition to remedies provided in the act, noncompliance with section 7 or 9 of this act shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act, and in addition to any remedies or penalties set forth in the Service Contract Companies Act shall be subject to any remedies or penalties available for a violation under the Uniform Deceptive Trade Practices Act.

Sec. 12. The director may adopt and promulgate rules and regulations necessary to carry out the Service Contract Companies
Act.

Sec. 13. Section 44-102.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-102.01. For purposes of Chapter 44, insurance shall not include a service contract. For purposes of this section, service contract shall mean (1) a motor vehicle service contract as defined in section 44-3521, (2) service contract defined in section 3 of this act, or (3) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, by inherent defect, or by the failure of an inspection to detect the likelihood of failure.

Sec. 14. Section 44-2402, Reissue Revised Statutes of Nebraska, is amended to read:

44-2402. The Nebraska Property and Liability Insurance Guaranty Association Act shall apply to all kinds of direct insurance except ocean marine, motor vehicle service contract reimbursement, service contract reimbursement policies defined in section 3 of this act, and those lines of insurance specified in subdivisions (1) through (4), (13) through (17), (19), and (20) of section 44-201.

Sec. 15. Section 44-3303, Reissue Revised Statutes of Nebraska, is amended to read:

44-3303. The insurance laws of this state, including
sections 44-3301 to 44-3327, do not apply to:

(1) Retainer contracts made by attorneys at law with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters;

(2) Plans providing no benefits other than consultation and advice in connection with or in combination with referral services;

(3) The furnishing of limited legal assistance on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, education, or similar relationship;

(4) The furnishing of legal assistance by labor unions and other employee organizations to their members in matters relating to employment or occupation;

(5) Employee welfare benefit plans to the extent that state laws are superseded by Section 514 of the Employee Retirement Income Security Act of 1974; or

(6) Automobile club service contracts which supply incidental or limited legal services or reimbursement for legal services in automobile related matters; or

(7) Service contracts under the Service Contract Companies Act.

Sec. 16. Section 45-336, Revised Statutes Supplement, 2000, is amended to read:

45-336. (1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and
shall contain the following items and a copy thereof shall be
delivered to the buyer at the time the instrument is signed, except
for contracts made in conformance with section 45-340: (a) The cash
sale price; (b) the amount of the buyer's downpayment, and whether
made in money or goods, or partly in money and partly in goods,
including a brief description of any goods traded in; (c) the
difference between subdivisions (a) and (b) of this subsection; (d)
the amount included for insurance if a separate charge is made
therefor, specifying the types of coverages, and the cost, if any,
for service contracts as defined in section 3 of this act; (e) the
basic time price, which is the sum of subdivisions (c) and (d) of
this subsection; (f) the time-price differential; (g) the amount of
the time-price balance, which is the sum of subdivisions (e) and
(f) of this subsection, payable in installments by the buyer to the
seller; (h) the number, amount, and due date or period of each
installment; and (i) the time-sales price.

(2) The contract shall contain substantially the
following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT
BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE
ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section
need not be stated in the sequence or order set forth in such
subsection. Additional items may be included to explain the
computations made in determining the amount to be paid by the
buyer. No installment contract shall be signed by the buyer or
proffered by seller when it contains blank spaces to be filled in
after execution, except that if delivery of the goods or services
is not made at the time of the execution of the contract, the
identifying numbers or marks of the goods, or similar information,
and the due date of the first installment may be inserted in the
contract after its execution.

(4) If a seller proffers an installment contract as part
of a transaction which delays or cancels, or promises to delay or
cancel, the payment of the time-price differential on the contract
if the buyer pays the basic time price, cash price, or cash sale
price within a certain period of time, the seller shall, in clear
and conspicuous writing, either within the installment contract or
in a separate document, inform the buyer of the exact date by which
the buyer must pay the basic time price, cash price, or cash sale
price in order to delay or cancel the payment of the time-price
differential. The seller or any subsequent purchaser of the
installment contract, including a sales finance company, shall not
be allowed to change such date.

(5) Upon written request from the buyer, the holder of an
installment contract shall give or forward to the buyer a written
statement of the dates and amounts of payments and the total amount
unpaid under such contract. A buyer shall be given a written
receipt for any payment when made in cash.

(6) After payment of all sums for which the buyer is
obligated under a contract, the holder shall deliver or mail to the
buyer at his or her last-known address one or more good and
sufficient instruments or copies thereof to acknowledge payment in
full and shall release all security in the goods and mark canceled
and return to the buyer the original agreement or copy thereof or
instruments or copies thereof signed by the buyer. For purposes of
this section, a copy shall meet the requirements of section
Sec. 17. Section 77-2702.25, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.25. (1) Maintenance agreement shall mean any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax under section 77-2703, for a stated period of time or interval of use. Maintenance agreement shall include any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

(2) Maintenance agreement shall not include any contract or agreement subject to the premium tax under Chapter 77, article 9, from a service contract business operating with a certificate of authority from or registered with the Department of Insurance.

(3) The selling price of a maintenance agreement shall not have to be separately stated and may be included as a part of the selling price of the item covered.

Sec. 18. This act becomes operative on July 1, 2003.

Sec. 19. Original sections 44-102.01, 44-2402, 44-3303, and 77-2702.25, Reissue Revised Statutes of Nebraska, and section 45-336, Revised Statutes Supplement, 2000, are repealed.