

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1199

Introduced by Lindstrom, 18; Kolterman, 24; Williams, 36.

Read first time January 23, 2020

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to amend sections 44-3520 and
- 2 44-3523, Reissue Revised Statutes of Nebraska, and section 44-3521,
- 3 Revised Statutes Cumulative Supplement, 2018; to change provisions
- 4 relating to motor vehicle service contract reimbursement insurance
- 5 policies; to define a term; to provide requirements for motor
- 6 vehicle service contract providers; to provide an operative date;
- 7 and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-3520, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-3520 Sections 44-3520 to 44-3526 and section 4 of this act shall
4 be known and may be cited as the Motor Vehicle Service Contract
5 Reimbursement Insurance Act.

6 Sec. 2. Section 44-3521, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 44-3521 For purposes of the Motor Vehicle Service Contract
9 Reimbursement Insurance Act:

10 (1) Director means the Director of Insurance;

11 (2) Incidental costs means expenses specified in a motor vehicle
12 service contract that are incurred by the service contract holder due to
13 the failure of a vehicle protection product to perform as provided in the
14 contract. Incidental costs include, but are not limited to, insurance
15 policy deductibles, rental vehicle charges, the difference between the
16 actual value of the stolen vehicle at the time of theft and the cost of a
17 replacement vehicle, sales taxes, registration fees, transaction fees,
18 and mechanical inspection fees. Incidental costs may be reimbursed in
19 either a fixed amount specified in the motor vehicle service contract or
20 sales agreement or by use of a formula itemizing specific incidental
21 costs incurred by the service contract holder;

22 (3) Mechanical breakdown insurance means a policy, contract, or
23 agreement that undertakes to perform or provide repair or replacement
24 service, or indemnification for such service, for the operational or
25 structural failure of a motor vehicle due to defect in materials or
26 workmanship or normal wear and tear and that is issued by an insurance
27 company authorized to do business in this state;

28 (4) Motor vehicle means any motor vehicle as defined in section
29 60-339;

30 (5)(a) Motor vehicle service contract means a contract or agreement
31 given for consideration over and above the lease or purchase price of a

1 motor vehicle that undertakes to perform or provide repair or replacement
2 service, or indemnification for such service, for the operational or
3 structural failure of a motor vehicle due to defect in materials or
4 workmanship or normal wear and tear but does not include mechanical
5 breakdown insurance.

6 (b) Motor vehicle service contract also includes a contract or
7 agreement that is effective for a specified duration and paid for by
8 means other than the purchase of a motor vehicle to perform any one or
9 more of the following:

10 (i) The repair or replacement of tires or wheels on a motor vehicle
11 damaged as a result of coming into contact with road hazards;

12 (ii) The removal of dents, dings, or creases on a motor vehicle that
13 can be repaired using the process of paintless dent removal without
14 affecting the existing paint finish and without replacing vehicle body
15 panels, sanding, bonding, or painting;

16 (iii) The repair of chips or cracks in or replacement of motor
17 vehicle windshields as a result of damage caused by road hazards;

18 (iv) The replacement of a motor vehicle key or keyfob in the event
19 the key or keyfob becomes inoperable or is lost;

20 (v) The payment of specified incidental costs as the result of a
21 failure of a vehicle protection product to perform as specified; and

22 (vi) Other products and services approved by the director;

23 (6) Motor vehicle service contract provider means a person who
24 issues, makes, provides, sells, or offers to sell a motor vehicle service
25 contract, except that motor vehicle service contract provider does not
26 include an insurer as defined in section 44-103;

27 (7) Motor vehicle service contract reimbursement insurance policy
28 means a policy of insurance issued to a motor vehicle service contract
29 provider to either provide reimbursement to the motor vehicle service
30 contract provider under the terms of the insured motor vehicle service
31 contracts issued or sold by the motor vehicle service contract provider

1 or, in the event of the motor vehicle service contract provider's
2 nonperformance, to pay on behalf of the motor vehicle service contract
3 provider all covered contractual obligations incurred by the motor
4 vehicle service contract provider under the terms of the insured motor
5 vehicle service contracts issued or sold by the motor vehicle service
6 contract provider in this state meeting the requirements in section
7 44-3523 that provides coverage for all obligations and liabilities
8 incurred by a motor vehicle service contract provider under the terms of
9 motor vehicle service contracts issued by the provider;

10 (8) Road hazards means hazards that are encountered during normal
11 driving conditions, including, but not limited to, potholes, rocks, wood
12 debris, metal parts, glass, plastic, curbs, or composite scraps;

13 (9) Service contract holder means a person who purchases a motor
14 vehicle service contract; and

15 (10)(a) Vehicle protection product means a vehicle protection
16 device, system, or service that:

17 (i) Is installed on or applied to a vehicle;

18 (ii) Is designed to prevent loss or damage to a vehicle from a
19 specific cause; and

20 (iii) Includes a written warranty.

21 (b) Vehicle protection product includes, but is not limited to,
22 chemical additives, alarm systems, body part marking products, steering
23 locks, window etch products, pedal and ignition locks, fuel and ignition
24 kill switches, and electronic, radio, and satellite tracking devices.

25 Sec. 3. Section 44-3523, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 44-3523 (1) No motor vehicle service contract reimbursement
28 insurance policy shall be issued, sold, or offered for sale in this state
29 unless the policy conspicuously states that the insurer will either
30 reimburse or pay on behalf of the motor vehicle service contract provider
31 any covered all sums which the motor vehicle service contract provider is

1 legally obligated to pay or, in the event of the provider's
2 nonperformance, will provide the service that the provider is legally
3 obligated to perform according to the provider's ~~in the performance of~~
4 ~~its contractual obligations under the motor vehicle service contracts~~
5 ~~issued or sold by the provider~~ in this state.

6 (2) In the event covered service is not provided by the motor
7 vehicle service contract provider within sixty days of proof of loss by
8 the service contract holder, the service contract holder is entitled to
9 apply directly to the insurer providing the motor vehicle service
10 contract reimbursement insurance policy.

11 (3) (2) The motor vehicle service contract reimbursement insurance
12 policy shall completely and fully reimburse or pay on behalf of the motor
13 vehicle service contract provider for all repair costs incurred under the
14 motor vehicle service contract from the first dollar of coverage. The
15 motor vehicle service contract reimbursement insurance policy shall not
16 require or allow a motor vehicle service contract provider to assume any
17 portion of direct or first-dollar liability for repairs under a motor
18 vehicle service contract. The motor vehicle service contract
19 reimbursement insurance policy shall not include any provision whereby
20 the insurer provides coverage in excess of reserves held by the motor
21 vehicle service contract provider or only in the event of the motor
22 vehicle service contract provider's insolvency or default. All unearned
23 premium reserves and claim reserve funds shall be established as
24 liabilities on the books of the insurer in accordance with statutory
25 accounting practices. This subsection shall not apply to programs
26 directly obligating an automobile dealer to perform under the motor
27 vehicle service contract.

28 Sec. 4. (1) For purposes of this section, conspicuously means
29 writing, displaying, or presenting a term in such a way that a reasonable
30 person against whom it is to operate shall notice. Conspicuously stated
31 terms include:

1 (i) A heading in capitals equal to or greater in size than the
2 surrounding text, or in contrasting type, font, or color to the
3 surrounding text of the same or lesser size; and

4 (ii) Language in the body of a record or display in larger type than
5 the surrounding text, or in contrasting type, font, or color to the
6 surrounding text of the same size, or set off from surrounding text of
7 the same size by symbols or other marks that call attention to the
8 language.

9 (2) It is the responsibility of the motor vehicle service contract
10 provider issuing the motor vehicle service contract to file a true and
11 correct copy of the motor vehicle service contract form, motor vehicle
12 service contract reimbursement insurance policy, and the notice of filing
13 form with the Department of Insurance. Such notice of filing shall be
14 made on a form provided by the department and must contain the name and
15 address of the business entity filing the form as well as a contact
16 person, the names and addresses of entities from which the service
17 contract forms were purchased, the names and addresses of insurers
18 insuring the provider's contractual liability, and the names and
19 addresses of sales personnel. It is the responsibility of the motor
20 vehicle service contract provider to notify the department on a
21 continuing basis of any changes in the filings.

22 (3) Every motor vehicle service contract shall be written in clear,
23 understandable language and shall be printed or typed in easy-to-read
24 type, size and style, and shall not be issued, sold, or offered for sale
25 in this state unless the contract:

26 (a) Identifies the motor vehicle service contract provider and the
27 service contract holder;

28 (b) Conspicuously states that the obligations of the motor vehicle
29 service contract provider to the service contract holder are guaranteed
30 under a service contract reimbursement insurance policy;

31 (c) Conspicuously states the name and address of the insurance

1 company issuing the reimbursement insurance policy;

2 (d) Sets forth the total purchase price and the terms under which it
3 is to be paid;

4 (e) Sets forth the procedure for making a claim, including an
5 address and telephone number for claim assistance;

6 (f) Conspicuously states the existence of a deductible amount, if
7 any;

8 (g) Clearly specifies the merchandise or services, or both, to be
9 provided and any limitations, exceptions or exclusions;

10 (h) Sets forth all of the obligations and duties of the service
11 contract holder, including, but not limited to, the duty to prevent any
12 further damage to the vehicle and the obligation to notify the provider
13 in advance of any repair, if any;

14 (i) Sets forth any terms, restrictions, or conditions governing
15 transferability of a service contract, if any;

16 (j) Sets forth applicable cancellation requirements; and

17 (k) States that the service contract holder has the right to file a
18 claim directly with the insurer in the event of nonperformance by the
19 motor vehicle service contract provider in the event covered service is
20 not provided by the motor vehicle service contract provider within sixty
21 days of proof of loss being filed by the service contract holder with the
22 service contract provider, along with the method, requirements, and
23 instructions for making such a claim.

24 (4) If the director determines that a motor vehicle service contract
25 provider has failed to comply with the Motor Vehicle Service Contract
26 Reimbursement Insurance Act, the director may issue an order to cease and
27 desist from selling or offering for sale motor vehicle service contracts.
28 Accompanied with that order shall be a notice of hearing setting forth
29 the time, date, place, and issues to be heard. Such hearing shall take
30 place not less than ten days nor more than thirty days from the date from
31 the issuance of the order to cease and desist. Upon the failure of a

1 motor vehicle service contract provider to obey an order to cease and
2 desist issued by the director, the director may give notice in writing of
3 the failure to the Attorney General, who may commence an action against
4 the provider to enjoin that provider from selling or offering for sale
5 motor vehicle service contracts.

6 (5) If any provision of this section is declared invalid, the
7 remainder shall not be affected.

8 Sec. 5. This act becomes operative on January 1, 2021.

9 Sec. 6. Original sections 44-3520 and 44-3523, Reissue Revised
10 Statutes of Nebraska, and section 44-3521, Revised Statutes Cumulative
11 Supplement, 2018, are repealed.