

## LEGISLATIVE BILL 113

Approved by the Governor May 18, 1981

Introduced by DeCamp, 40

AN ACT to adopt the Motor Club Services Act; to amend section 44-101.01, Reissue Revised Statutes of Nebraska, 1943, relating to the Director of Insurance; to provide duties for the Director of Insurance; to establish a penalty; to provide for severability; to provide an operative date; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Motor Club Services Act.

Sec. 2. For the purposes of sections 1 to 21 of this act, unless the context otherwise requires, the definitions found in sections 3 to 8 of this act shall apply.

Sec. 3. Club shall mean any organization or other person presently or hereafter engaged in selling, furnishing, or making available to members, either as principal or agent, motor club services.

Sec. 4. Club representative shall mean any person in this state designated by the club who acts or aids in any manner in the solicitation, negotiation, or renewal of motor club service contracts, except it shall not mean any person performing only work of a clerical nature in the office of a club or providing an application to a potential club member.

Sec. 5. Director shall mean the Director of Insurance.

Sec. 6. Insurance service shall mean any act by a club to sell or furnish to a member group insurance benefits covering accidental injury and death or any motor club service, except that such insurance shall be issued only by an insurance company duly authorized to do such business in this state. A club representative shall not be required to be a licensed insurance agent pursuant to Chapter 44 in connection with the sale of group insurance benefits covering accidental injury and death or other insurance covering a motor club service specifically enumerated in section 7 of this act, which may be issued in conjunction with and as a part of a

motor club service contract.

Sec. 7. Motor club service shall mean the rendering, furnishing, or procuring of, or reimbursement for any of the services enumerated in this section, which shall include but not be limited to:

- (1) Towing service;
- (2) Bail and arrest bond service;
- (3) Emergency road service;
- (4) Claim adjustment service;
- (5) Legal service;
- (6) Theft service;
- (7) Map service;
- (8) Emergency travel expense service;
- (9) Community traffic safety service;
- (10) Merchandise and discount service;
- (11) Travel, touring, and travel information service;
- (12) Guaranteed hotel or motel rate service;
- (13) New car pricing service;
- (14) Financial service;
- (15) Check cashing service;
- (16) Personal property registration service;
- (17) Buying and selling service;
- (18) License service;
- (19) Credit card service; and
- (20) Insurance Service.

Nothing contained in this section shall prohibit a club from offering services which augment or are incidental to any service offered by the club or any other services which are of assistance and are beneficial to members and are feasible for the club to render.

Sec. 8. Motor club service contract shall mean any written agreement whereby any club, for a consideration, promises to render, furnish, or procure for any member a motor club service.

Sec. 9. A club shall not render or agree to render a motor club service without first depositing and thereafter continuously maintaining the amount of fifty thousand dollars in cash or securities approved by the director or, in lieu of such cash or securities, a performance bond in the amount of fifty thousand dollars executed by a surety company authorized by the laws of this state to transact business within this state. The bond shall be executed to the State of Nebraska and shall be for the use of the state and for any members who may have a cause of action against the club.

Sec. 10. The security required in section 9 of this act shall be used for the following:

(1) Protection, use, and benefit of all persons whose applications for membership in a motor club have been accepted by such club or its representative; and

(2) Covering of the following obligations, which are hereby required to be met:

(a) The faithful furnishing and rendering to members by the club of any and all of the motor club services furnished, sold, or offered for sale by it;

(b) The complying with and abiding by all the provisions of sections 1 to 21 of this act by the club, and all the rules and regulations of the director, adopted and promulgated in accordance with sections 1 to 21 of this act; and

(c) The paying of all fines and penalties by the club that may become due to the state from the club under and by virtue of the provisions of sections 1 to 21 of this act.

Sec. 11. If any member shall be defrauded or aggrieved by any misconduct, wrongful act, misrepresentation, or failure of the club to render its services or fulfill its contractual obligations, such member may bring suit on the security provided in section 10 of this act in his or her own name, but the aggregate liability of the surety for all such suits shall, in no event, exceed the amount of such bond required in section 9 of this act.

Sec. 12. (1) No club shall offer, issue, or renew a motor club service contract in this state without first obtaining from the director a certificate of authority to act. A certificate of authority shall be issued by the director to the club upon submission of the items in subdivisions (a) to (f) of this subsection in a form satisfactory to the director. The applicant shall submit:

(a) A formal application for the certificate in such form and detail as the director requires, executed under oath by its president and secretary or two other principal officers of the club or such other persons as the director may require;

(b) A certified copy of its charter or articles of incorporation and its by-laws, if any;

(c) If a corporation, a certified copy of the certificate of authority or good standing certificate from the Secretary of State;

(d) A copy of the club's most recent financial statement prepared in accordance with generally accepted accounting principles and certified by two principal officers of the applicant or, in the event the applicant is not a corporation, such other persons as the director may require;

(e) An explanation of its plan of doing business and copies of the following:

(i) Its application for membership;

(ii) The proposed membership certificate or identification card and any proposed addendum to such certificate or card;

(iii) Any individual insurance policy or group certificate to be offered; and

(iv) Any motor club service contract to be issued; and

(f) Any other relevant information requested by the director.

(2) No certificate of authority shall be issued by the director until the club has paid an initial certificate of authority fee of one hundred dollars.

Sec. 13. Certificates of authority issued pursuant to sections 1 to 21 of this act shall expire

annually on April 30, unless sooner revoked or suspended. No certificate of authority shall be renewed by the director until the club has:

(1) Paid an annual certificate of authority fee of one hundred dollars; and

(2) Filed a copy of its most recent financial statement prepared in accordance with generally accepted accounting principles and certified by two principal officers of the club or, in the event the applicant is not a corporation, such other persons as the director may require.

Sec. 14. The director may order the club to cease and desist, or may revoke, suspend, or refuse to continue the certificate of authority of a club whenever, after a hearing and for cause shown, he or she determines that any of the following circumstances exist:

(1) The club has violated or failed to comply with any provision of sections 1 to 21 of this act or any rule or regulation promulgated under sections 1 to 21 of this act;

(2) The club has obtained a certificate of authority through willful misrepresentation or fraud;

(3) The club has engaged in fraudulent or dishonest practices;

(4) The club has willfully, orally, or in writing, misrepresented the terms, benefits, privileges, and provisions of any motor club service contract issued or to be issued by it or any other club;

(5) The club is unable to meet its obligations as determined by generally accepted accounting principles;  
or

(6) The club has refused without just cause to submit relevant information to the director with respect to the motor club services within this state, after it has received notice of an alleged occurrence of any of the actions in subdivisions (1) to (5) of this section.

Sec. 15. No motor club service contract shall be issued or delivered in this state unless it contains all of the following:

(1) The exact corporate or other name of the club;

(2) The exact location of its home office or any business office to which inquiries may be made;

(3) The motor club services contracted for;

(4) The territory wherein motor club services contracted for are to be rendered; and

(5) The duration of such motor club service contract.

Sec. 16. (1) No individual shall act as a club representative in Nebraska without the club having registered such individual with the director within thirty days after the date of designation as a club representative. Application for registration as a club representative shall be made to the director upon forms prescribed and furnished by him or her. The director may require a club representative to take a written examination, for a fee, on the services customarily offered by motor clubs. A club representative licensed as an insurance agent for sickness, accident, and health insurance pursuant to Chapter 44 shall not be required to be examined.

(2) The club representative shall furnish information concerning his or her identity, business address, personal history, business experience, and such other information that the director deems pertinent and germane. A club representative shall (a) be at least eighteen years of age, (b) be a trustworthy person of good repute, and (c) have received training from the club or have otherwise qualified by experience in the business of clubs rendering motor club services.

(3) Any willful misrepresentation of any information required to be disclosed in any application for registration shall be subject to the sanctions provided for in sections 1 to 21 of this act.

(4) Upon termination of any club representative's authority to act on behalf of the club, the club shall notify the director in writing within thirty days of such termination.

(5) The fee to be paid to the director at the time registration is made annually on a day specified by the director for the renewal of such registration shall be five dollars.

Sec. 17. Upon satisfactory evidence that a club representative has violated or failed to comply with any provision of sections 1 to 21 of this act or rule or

regulation promulgated under sections 1 to 21 of this act, the director may issue an order requiring the club representative to cease and desist from engaging in such violation. After a hearing and for good cause shown, the director may revoke or suspend the club representative's authority.

Sec. 18. The offering of motor club services shall be subject solely and exclusively to the provisions of sections 1 to 21 of this act, and the offering of such services by any duly authorized club shall not be deemed transacting business as an insurance company, association, or exchange, except as otherwise provided in sections 1 to 21 of this act.

Sec. 19. The director shall administer and enforce the provisions of sections 1 to 21 of this act and shall publish, adopt, and promulgate rules and regulations in accordance with sections 1 to 21 of this act.

Sec. 20. Except as otherwise provided in sections 1 to 21 of this act, all hearings held by and all orders and decisions made or any failure to act by the director pursuant to sections 1 to 21 of this act shall be subject to the provisions of Chapter 84, article 9, including its provisions for judicial review.

Sec. 21. If any person shall willfully violate the provisions of sections 1 to 20 of this act, such person shall be deemed guilty of a class III misdemeanor.

Sec. 22. That section 44-101.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-101.01. The Department of Insurance shall have general supervision, control, and regulation of insurance companies, associations, and societies, and the business of insurance in Nebraska, including companies in process of organization. The Director of Insurance shall be the chief administrative officer of the department and shall have the power and duty to enforce and execute all the insurance laws of this state and to make all needful rules and regulations for the purpose of carrying out the true spirit and meaning of this enactment and all laws relating to the business of insurance and, to that end, may authorize and empower an assistant or employee to do any and all things that he or she may do and on his or her behalf, and he or she shall see that all laws respecting insurance companies and insurance agents are faithfully executed. The director or his or her representative shall issue all certificates and licenses

as provided for in Chapter 44 and sections 1 to 21 of this act. The director and his or her authorized representative shall have the power and authority to do all things and to perform all acts the department is given the power and authority to do. The director shall adopt and promulgate rules and regulations pursuant to section 19 of this act, and shall execute and enforce the provisions of sections 1 to 21 of this act.

Sec. 23. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 24. This act shall become operative on January 1, 1982.

Sec. 25. That original section 44-101.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 26. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.