

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 297

H. P. 197

House of Representatives, January 13, 1981

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Jackson of Yarmouth.

Cosponsors: Miss Aloupis of Bangor, Mrs. Martin of Van Buren.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Pertaining to Used Home Warranty and Service Contracts.

Be it enacted by the People of the State of Maine, as follows:

32 MRSA c. 59, sub-c. IV is enacted to read:

SUBCHAPTER IV

HOME SERVICE CONTRACTS

§ 4120. Definitions and exceptions

1. **Definitions.** As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

A. "Contract fee" means the consideration received or to be received by a home service company for the issuance and delivery of any binder or service contract.

B. "Holder" means any person entitled to receive services or payment from a home service company pursuant to a home service contract.

C. "Home service company" means any person who issues and performs or arranges to perform service or defrays the cost of service pursuant to a home service contract.

D. "Home service contract" means any contract, however described or denominated, whereby, for a set fee and specified duration, a person agrees to defray the cost of repair or replacement, or provide or arrange for the repair or replacement of all or any part of any structural component, appliance or system of a home necessitated by wear and tear, deterioration or inherent defect, or by failure of an inspection to detect the likelihood of any such loss.

E. "Home service contract sales agent" means any person with whom the home service company has a contract and who is utilized by that company for the purpose of selling or issuing home service contracts directly or through its employees or agents.

F. "Home service contract sales associate" means the employees or agents of the home service contract sales agent utilized for selling or offering for sale home service contracts.

G. "Impaired" means the circumstance which exists when liabilities exceed assets.

H. "Insolvent" means the inability to pay debts as they become due in the usual course of business.

2. **Exceptions.** The following exceptions apply to this subchapter.

A. Except as otherwise provided in this subchapter, provisions of the insurance laws of this State do not apply to any home service company granted a license under this subchapter. This provision does not apply to an insurance company licensed and regulated pursuant to Title 24-A.

B. Provisions of this subchapter do not apply to any person who issues any service or maintenance contract or performance guarantee which provides for maintenance, repair, service, replacement, operation or performance of any product which is or which is similar to that manufactured, sold or leased by the issuer and no such person, his employees or agents may be required to be licensed or regulated under this subchapter. This subchapter does not apply to any contract of insurance, as defined in Title 24-A, and does not apply to any home repair contract regulated by Title 9, chapter 360. This subchapter does not apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in this State and the insurance policy underwriting the program has been filed with and approved by the Bureau of Insurance.

§ 4121. Rules

The commission may adopt or promulgate rules necessary and proper to effectuate provisions of this subchapter pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

§ 4122. Review of decisions

Any person aggrieved by any decision or order of the director pursuant to this

subchapter has the right to request a review and determination by the commission, provided that the request is made within 30 days of the date of the decision or order. The commission may reverse, modify or affirm any such decision or order.

§ 4123. License required

1. **Restriction on activity.** No home service company in this State may sell, offer to sell, arrange or solicit the sale of or receive applications for home service contracts unless authorized under an existing license issued by the director.

2. **Application.** On the effective date of this subchapter, every home service company desiring to do business in this State must submit an application for a license and may conditionally commence business at the time of the filing. The director has 60 days from receipt of each license application to either approve or deny the application. Upon denial, the director shall specify the grounds therefor and each applicant shall then have an additional 60 days to remedy to the satisfaction of the director. Failure to remedy within the additional 60-day period automatically rescinds the conditional operating consent set forth in this Part and the applicant home service company shall cease doing business in this State until duly licensed.

3. **Insurers.** An insurer, while authorized to transact property or casualty insurance in this State, may also transact a home service contract business without additional qualifications or authority, but is otherwise subject to the applicable provisions of this subchapter.

§ 4124. Application for license

1. **Form; qualifications for license.** Each application for a license shall be on a form prescribed by or acceptable to the commission and shall be verified by the applicant, by an officer or other authorized representative of the applicant. The director may not issue a license to any home service company unless the home service company is qualified therefor, as follows:

A. Is a solvent natural person or other solvent legal entity formed under the laws of this State or of any other state, district, territory or possession of the United States;

B. Furnishes the director with satisfactory evidence that the management of the home service company is competent and trustworthy;

C. Proposes to use, and uses in its business, a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any association, corporation or organization already doing business in this State as will tend to mislead or confuse the public;

D. Files the bond required or otherwise complies with section 4125;

E. Is otherwise in compliance with this subchapter; and

F. Establishes, to the satisfaction of the director, that it employs or has contracted with licensed or skilled tradesmen and is able to perform the services described by it in the home service contract. This qualification does not apply if the home service contract provides for payment or reimbursement for the cost of services instead of providing or arranging for completion of service.

2. Additional information. In addition to information relative to its qualifications as required under subsection 1, the application shall show:

A. A list of the names, addresses and official positions of the persons responsible for the affairs of the applicant, including all members of the board of trustees, executive committee, or other governing body or committee, and the principal officers in the case of a partnership or association;

B. A copy of the home service contract made or to be made between the applicants and any other person;

C. The most recent financial statement of the applicant prepared by an independent certified public accountant, showing the applicant's assets, liabilities, net worth and sources of financial support; and

D. A license application fee in the amount of \$1,000.

§ 4125. Required deposit or bond

1. Amount of deposit. To assure the faithful performance of its obligations to its holders in the event of insolvency, every home service company shall, prior to the issuance of its license by the director, deposit and continuously maintain with the Treasurer of State securities of the type eligible for deposit by insurers under which securities shall have at all times a market value of not less than \$50,000.

2. Bond in lieu of deposit. In lieu of any deposit or securities required under subsection 1, the home service company may file with the director a surety bond in like amount. The bond shall be one issued by an insurer, duly authorized to transact surety insurance in this State, shall be for the same purpose as the deposit in lieu of which it is filed and shall be subject to the director's approval. No such bond may be canceled or subject to cancellation, unless at least 30 days advance notice in writing is filed with the director.

3. Purpose. Securities and bond posted by a home service company pursuant to this section shall be for the benefit of and subject to action thereon in the event of insolvency of the home service company by any person or persons sustaining an actionable injury due to the failure of the home service company to faithfully perform its obligations to its holders.

4. Safekeeping of securities. The State is responsible for the safekeeping of all securities deposited with the Treasurer of State under this Part at the expense of the depositor. The securities are not, on account of being in this State, subject to taxation, but shall be held exclusively and solely to guarantee the home service company's faithful performance of its obligations to its holders.

5. **Substitution.** The depositing home service company may, during its solvency, exchange or substitute other securities of like quality and value for securities on deposit, receive the interest and other income accruing to the securities and inspect the deposit at all reasonable times.

6. **Release.** The deposit or bond shall be maintained unimpaired as long as the home service company continues in business in this State. Whenever the home service company ceases to do business in this State and furnishes the director proof satisfactory to the director that it has discharged or otherwise adequately provided for all its obligations to its holders in this State, the director, with the advice and consent of the commission, shall authorize release of the deposited securities to the parties entitled thereto, on presentation of the receipts for the securities, or shall authorize release of any bond filed in lieu of the deposit.

7. **Exemption.** Home service companies whose net worth exceeds the capital and surplus requirements of this State to obtain a license to write liability insurance as a domestic insurer are exempt from this section.

§ 4126. Reserves

1. **Amount.** A home service company shall maintain a single-funded reserve for its liability to furnish repairs and replacement services under its issued and outstanding contracts. The reserve shall be sufficient to cover anticipated liability for repairs and replacement services on outstanding contracts and shall be based on sound actuarial principles, but the reserve shall at all times not be less than 50% of annual contract fees, net of reinsurance, received in this State, less any amounts theretofore paid on account of the liability incurred during the applicable years. The commission, with the advice of the Superintendent of Insurance, may establish higher reserve standards if it determines that the reserves established by a home service company are inadequate to cover its liabilities under outstanding contracts.

2. **Exclusion.** For the purposes of this section, the reserve shall not include contract fees on home service contracts:

A. To the extent that provision is made for reinsurance, whether in an insurer or home service company, of the outstanding risk on these contracts; or

B. Where the home service company has insurer, with an insurer admitted in this State, all risk of loss incurred under these contracts, provided that the policy of insurance including the coverage further provides that, in the event of the insolvency, bankruptcy or dissolution of the home service company, the insurer will pay losses under the contracts directly to claimants and that in the event of the home service company's inability to administer claims, the insurer will assume full responsibility for administration of claims.

§ 4127. License expiration; renewal

Each license as a home service company issued under this Part expires 2 years from the date of issuance or expires upon termination of the surety bond required

under section 4125 if not otherwise in compliance with that section. In the absence of any reason or condition warranting refusal of granting a license, the home service company license may be renewed biennially upon its request and upon payment of the license fee in the amount of \$1,000.

§ 4128. Grounds for suspension or revocation of license or denial of renewal

1. With notice. The license of a home service company may be revoked, suspended or renewal denied, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, if it is determined that the home service company:

A. Has violated any lawful order of the director or any provision of this subchapter;

B. Is in such condition or using such methods and practices in the conduct of its business as to render its further conduct of business in this State hazardous or injurious to its holders or to the general public;

C. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to that examination when required by the director;

D. Has failed to pay any final judgment rendered against it in this State within 60 days after the judgment became final;

E. Has, with such frequency as to indicate its general business practice in this State, and without just cause, refused to pay proper claims arising under its contract obligations; or, without just cause, has compelled holders to accept less than the amount due them or to employ attorneys or to bring suit against the service company to secure full payment or settlement of these claims; or

F. Has failed to maintain a single-funded reserve for its liability to furnish repairs and replacement services under its issued and outstanding contracts, as required under section 4126.

2. Suspension without notice. The commission may, without advance notice or hearing, notwithstanding the Maine Administrative Procedure Act, Title 5, chapter 375, immediately suspend the license of any home service company for up to 30 days if it finds that one or more of the following circumstances exist.

A. The home service company is insolvent or impaired;

B. Proceedings for receivership, conservatorship, rehabilitation or other delinquency proceedings regarding the home service company have been commenced in any state in either state or federal court.

C. The financial condition or business practice of the home service company otherwise pose an imminent threat to the public health, safety or welfare of the residents of this State.

3. Insurer; certificate of authority. Violation of this subchapter by an insurer

shall be grounds for suspension or revocation of the insurer's certification of authority in this State.

4. False or misleading statements. A license or registration may be revoked or suspended or renewal refused if it is determined that the home service company or sales agent has engaged in making false or misleading statements in either written or oral communications with regard to the advertising, offering or sale of home service contracts, to include, but not limited to, representations related to the benefits and service available under the home service contract.

§ 4129. Automatic termination of sales agent registration

Revocation, suspension or nonrenewal of a home service company license shall serve to automatically terminate the registration of its sales agents.

§ 4130. Order, notice of suspension or revocation of license

1. Method. Suspension or revocation of a home service company's license shall be by order mailed to the home service company by registered or certified mail; and upon receipt, the home service company shall promptly relay notice of the suspension or revocation to the home service company's sales agents in this State. The home service company may not solicit or write any new home service contracts in this State during the period of any such suspension or revocation.

2. Publication. In his discretion, the director may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this State.

§ 4131. Duration of suspension; obligation during suspension period; reinstatement

1. Duration. Suspension of a home service company's license shall be for such period, not to exceed one year, as is fixed in the order of suspension, unless the suspension or the order upon which the suspension is based is modified, rescinded or reserved.

2. Obligations. During the period of suspension, the home service company shall file its annual statement and pay fees and licenses, as required under this subchapter, as if the license had continued in full force.

3. Reinstatement. Upon expiration of the suspension period, if within that period the license has not otherwise terminated, the home service company's license shall automatically be reinstated, unless it is determined by the director that the causes of suspension have not been removed, or, after notice and hearing, it is found that the home service company is otherwise not in compliance with the requirements of this subchapter.

4. Authority of company. Upon reinstatement of the home service company's license or reinstatement of the certificate of authority of an insurer following suspension, the authority of the home service company sales agents in this State to represent the home service company or insurer shall likewise be reinstated.

§ 4132. Filing of forms

1. **Restrictions on activity.** No home service contract may be issued or used in this State after 120 days following the effective date of this subchapter, unless it has been filed with and approved by the director.

2. **Filing in advance.** Except as provided in subsection 1, every home service contract shall be filed not less than 30 days in advance of its intended issuance or use. At the expiration of 30 days from the date of filing, a home service contract so filed is deemed approved unless, prior thereto, it has been affirmatively approved or disapproved by written order of the director.

3. **Approval of contract.** The director shall not approve any home service contract unless it:

A. Is written in nontechnical, readily understood language, using words with common meanings;

B. Clearly, conspicuously and plainly specifies:

(1) The services to be performed by the service company and the terms and conditions of the performance;

(2) The service fee or deductible amount applicable per claim, per occurrence, if any;

(3) Each of the items covered by the contract;

(4) All exclusions and limitations respecting the extent of coverage;

(5) The period during which the contract will remain in effect and the cancellation provision; and

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed; and

C. Includes reasonable procedures for reporting a claim and provides for the performance of services without requiring the filing of claim forms or applications prior to the rendering of services.

§ 4133. Filing of fees

All contract fees and related inspection fees shall be filed with the director not less than 30 days in advance of their intended use.

§ 4134. Annual statement; examination

1. **Time of filing; financial statement.** Each home service company shall, annually within 90 days of the close of its fiscal year, file with the director its annual statement in a form prescribed by or acceptable to the director. The annual statement shall include a current financial statement, including a balance sheet and statement of operations prepared in accordance with generally

accepted accounting principles and certified by an independent certified public accountant.

2. **Contracts.** Each annual statement shall include the number of home service contracts issued during the preceding fiscal year, the number cancelled or expired during the year, the number in effect at year end and the amount of all contract fees received for contract issuance during the year.

3. **Reserve.** Each annual statement shall include necessary information to demonstrate that the reserve requirement of section 4126 has been met.

4. **Failure to file.** Any home service company neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which the neglect continues and, upon notice by the director to that effect, its authority to do business in this State shall cease while the default continues.

5. **Additional reports.** In addition to an annual statement, the director may require of licensees, under oath and in the form prescribed by him, such additional regular or special reports as he may deem necessary to the proper supervision of licensees under this subchapter.

6. **Examination.** The director may make an examination of the affairs of any licensed home service company as he deems necessary. Every home service company shall make its books and records relating to its home service contract operations available for the examination. All expenses relating to such an examination shall be borne by the home service company being examined.

§ 4135. Service of process; appointment of director as process agent

1. **Irrevocable appointment.** Each home service company applying for authority to transact business in this State, whether domestic or foreign, shall appoint the director and his successors in office as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this State and shall agree that process so served shall be valid and binding upon the home service company. The appointment shall be irrevocable, shall bind the home service company and any successor in interest as to the assets or liabilities of the home service company and shall remain in effect as long as there are outstanding in this State any obligations or liability of the home service company resulting from its home service contract transactions.

2. **Designation by company.** At the time of appointment of the director as its process agent, the home service company shall file with the director a designation of the name and address of the person to whom process against it, served upon the director, is to be forwarded. The home service company may change the designation at any time by a new filing.

3. **Method of service.** Service shall be made by serving copies in triplicate of the process upon the director or upon his assistant, deputy or other person in charge of his office. Upon receiving the service, the director shall file one copy,

return one copy with his admission of service and promptly forward one copy of the process by registered or certified mail to the person last designated by the home service company to receive the copy as provided in subsection 2.

§ 4136. Home service company sales agent registration required

1. **Time of registration; fee.** No home service company sales agent may solicit, negotiate, sell, advertise or effectuate home service contracts in this State on behalf of a home service company, unless registered with the director within 30 days of his appointment. The agent shall pay a biennial registration fee of \$30.

2. **Written examination.** If the sales agent so registered does not hold a current and valid real estate broker license, the director may require the same evidence of qualifications as is required of applicants under section 4106 and may require a written examination as to his competency with regard to home service contracts. Upon registration, the nonreal estate broker sales agent shall be held to the same standards of trustworthiness and competency required of a licensed real estate broker or salesman.

3. **Compliance with insurance law.** No home service company sales agent may directly or indirectly solicit or negotiate insurance contracts or hold itself out to be an insurance agent, unless so qualified and licensed under Title 24-A.

4. **Penalties.** If a person acts as a sales agent without being registered with the director or after his registration has been withdrawn or revoked, that person shall be fined up to \$100 per day for each day in which he has so acted, but any home service contract issued pursuant to these acts shall bind the home service company if otherwise valid. In these cases, the Administrative Court may also, for good cause shown, and after notice and hearing, suspend or revoke the license of the home service company for which the person was acting.

5. **Trust funds.** All funds belonging to home service companies or insurers under this subchapter and received by a sales agent in transactions shall be trust funds received in a fiduciary capacity. The sales agent shall account for and pay these funds to the home service company or insurer entitled thereto in the regular course of business. Any sales agent who diverts or appropriates these funds, or any portion thereof, to his own or other use shall upon conviction be guilty of a Class D crime, punishable as provided by statute.

6. **Associates.** All home service contract sales associates are subject to the same requirements and penalties as are applicable to home service contract sales agents, except that licensed real estate brokers and salesmen are exempt from registration requirements.

§ 4137. Penalty for violation

Any person who knowingly makes a false or otherwise fraudulent application for license under this subchapter or who knowingly violates any of its provision, in addition to any applicable denial, suspension, revocation or refusal to renew or continue any license, is guilty of a Class D crime. Each instance of violation is a separate offense.

STATEMENT OF FACT

This bill is intended to provide protection for consumers who purchase and rely upon home service contracts. It is not unusual for consumers to completely exhaust financial reserves in order to purchase a home, and therefore it is a time when they can ill afford expensive repairs. Accordingly, significant reliance may be placed upon the protection provided by a home service contract. At present, there does not appear to be any assurance that the issuer of a home service contract will be financially able to pay claims, nor is there any safeguard against illusory coverage and misleading representations.

This bill requires licensing of home service companies by the Real Estate Commission based upon solvency and the filing of surety bond, or depositing of securities, to assure the faithful performance of company obligations. Approval of contracts is required based upon clarity and disclosure of minimum information. The commission director is appointed as agent for service of legal process. The bill also requires registration of sales agents who, for the most part, would be real estate brokers.

Enforcement, consistent with the Maine Administrative Procedure Act, is also addressed.

Manufacturer warranties, insurance and home service contracts for new homes, which are underwritten by insurance companies licensed by the State, are exempt from the provisions of this bill. Property and casualty insurers licensed by the State are exempt from all qualification requirements of this bill.

Real Estate Commission

Appropriation 4118.1001

	1981-82	1982-83	
Revenue		\$20,000	\$ 2,000
Expenditures		10,000	10,000

Revenue estimates are based upon the assumption that 5 companies will issue contracts in this State and the contracts will be offered for sale by 500 sales agents.