

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1829

S.P. 688

In Senate, May 9, 1991

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator RICH of Cumberland

Cosponsored by Representative SHELTRA of Biddeford and Representative CARLETON of Wells.

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STATE OF MAINE

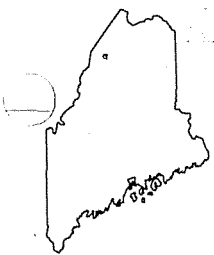
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Transfer Responsibility for the Regulation of Home Service  
Contracts from the Real Estate Commission to the Bureau of Insurance.**

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

4 Sec. 1. 24-A MRSA c. 64 is enacted to read:

6 CHAPTER 64

8 HOME SERVICE CONTRACTS

10 §4711. Definitions

12 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

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

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

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

26 4. Home service contract. "Home service contract" means any contract or agreement, however described or denominated, when offered in connection with the sale of residential property, whereby, for a set fee and for a 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.

36 5. Home service contract sales agent. "Home service contract sales agent" means any person designated by the home service company who is used by that company for the purpose of selling or issuing home service contracts or any employee or agent of the appointed home service contract sales agent used for selling or offering for sale home service contracts.

42 6. Impaired. "Impaired" means the circumstance that exists when, in the case of a stock corporation, the home service company's assets do not at least equal the sum of its liabilities and its minimum capital, or in the case of a nonstock entity, when the assets do not equal the sum of its liabilities and any capital funds required under this chapter.

50 7. Insolvent. "Insolvent" means the circumstance that exists when a home service company is unable to meet obligations

2 as they become due in the usual course of business or when the  
3 home service company's assets are less than its liabilities.

4  
5 **§4712. Application of insurance laws**

6  
7 A home service company or agent that is granted a license or  
8 certificate under this chapter is subject to chapters 1, 3 and 23.

9  
10 **§4713. Exceptions**

11 1. Issuer's product. This chapter does not apply to any  
12 person who issues any service or maintenance contract or  
13 performance guarantee that provides for maintenance, repair,  
14 service, replacement, operation or performance of any product  
15 that is or is similar to that manufactured, sold or leased by the  
16 issuer, and such a person, or the employees and agents of such a  
17 person, may not be required to be licensed or regulated under  
18 this chapter.

19  
20 2. Contracts of insurance. This chapter does not apply to  
21 any contract of insurance as defined in this Title.

22  
23 3. Certain new home warranties. This chapter does not  
24 apply to any program offering a warranty on a new home that is  
25 underwritten by an insurer licensed to do business in this State  
26 and the insurance policy underwriting the program has been filed  
27 with and approved by the bureau.

28  
29  
30 **§4714. Rules**

31  
32 The superintendent may adopt rules necessary and proper to  
33 administer this chapter pursuant to the Maine Administrative  
34 Procedure Act.

35  
36 **§4715. License required**

37  
38 A home service company may not sell, offer to sell, arrange  
39 or solicit the sale of or receive applications for home service  
40 contracts in this State unless authorized under a license issued  
41 by the superintendent.

42  
43 **§4716. Application for home service company license**

44  
45 1. Form; qualifications for license. Each application for  
46 a license must be on a form prescribed by or acceptable to the  
47 superintendent and must be verified by the applicant or by an  
48 officer or other authorized representative of the applicant. A  
49 license may be issued by the superintendent to a home service  
50 company if the applicant:

2 A. Provides the superintendent with satisfactory evidence  
4 that it is a solvent natural person or other solvent legal  
6 entity formed under the laws of this State or of any other  
8 state, district, territory or possession of the United  
10 States;

12 B. Furnishes the superintendent with satisfactory evidence  
14 that the management of the home service company is competent  
16 and trustworthy;

18 C. Proposes to use or uses in its business a name, together  
20 with a trademark or emblem, if any, that is distinctive and  
22 not so similar to the name or trademark of any association,  
24 corporation or organization doing business in this State  
26 that it will tend to mislead or confuse the public;

28 D. Complies with the financial requirements of section 4717  
30 and provides the additional information required in  
32 subsection 2;

34 E. Obtains the approval of the superintendent of all home  
36 service contracts the applicant intends to issue;

38 F. Establishes to the satisfaction of the superintendent  
40 that it employs or has contracted with licensed or skilled  
42 workers and is able to perform the services described by it  
44 in the home service contract, unless the home service  
46 contract provides for payment or reimbursement for the cost  
48 of services instead of providing or arranging for completion  
50 of the service; and

G. Otherwise complies with this chapter.

2. Additional information. In addition to information  
required under subsection 1, the application must include the  
following:

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 all home service contracts issued or proposed  
to be issued by the applicant;

C. An audited financial statement of current origin  
prepared by an independent certified public accountant that  
includes a current income statement and a statement of cash  
flow prepared in accordance with generally accepted

2 accounting principles and certified by an independent  
3 certified public accountant;

4 D. A copy of all basic organizational documents of the  
5 applicant, including, but not limited to, the articles of  
6 incorporation, articles of association or other applicable  
7 documents and all amendments to those articles and documents;

8 E. A copy of all bylaws, rules or other documents that  
9 regulate the conduct of the internal affairs of the  
10 applicant and all amendments to those bylaws, rules and  
11 documents;

12 F. A detailed description of the applicant's proposed  
13 method of soliciting sales and the basis of compensation to  
14 any person receiving compensation for soliciting sales;

15 G. The projected annual subscriber population for the next  
16 3 years of operation and a financial plan providing a  
17 one-year projection of the initial operating results  
18 anticipated, including the projected expenses, projected  
19 income and the sources of that income and the sources of the  
20 applicant's working capital;

21 H. Any available information concerning administrative  
22 proceedings or investigations conducted concerning the  
23 applicant by regulatory authorities in any state; and

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

25 **§4717. Financial requirements**

26 1. Reserves. A home service company shall maintain a  
27 single-funded reserve for all liabilities incurred in the  
28 furnishing of repairs and replacement services under its issued  
29 and outstanding contracts. The reserve may not be less than the  
30 greater of:

31 A. An amount necessary to pay all of its unpaid loss and  
32 claim obligations incurred whether reported or unreported to  
33 the home service company; or

34 B. An amount that is equal to 50% of the total home service  
35 warranty fees for each year in which the contracts are sold.

36 The reserve established for each year in which contracts are sold  
37 may be reduced by 20% at the end of each of the 5 subsequent  
38 years. Higher reserve standards may be established if the  
39 superintendent determines that the reserves established by a home  
40 service company are inadequate to cover its liabilities under the  
41 outstanding contracts. To the extent that reserve methodologies  
42 required in support of contracts issued in other states produce

2 reserves that are at least equal to those required under this  
3 section, the resulting reserves will satisfy the requirements of  
4 this section.

6 2. Capital funds required. A home service company may  
7 qualify for a license if it possesses and maintains total capital  
8 funds that are equal to the greater of \$500,000 or 1/5 of its  
9 annual written fees. In computing the capital funds requirement,  
10 the following are deducted from the capital funds of the  
11 association: goodwill; franchise lists; patents or trademarks;  
12 receivables from or advances to officers, directors, employees,  
13 salesmen or affiliated companies; and assets deposited outside  
14 the United States.

16 3. Insurance transfers permitted. A home service company  
17 may purchase liability insurance that provides for transfer of  
18 all or part of its home protection claims and associated expenses  
19 from an insurer that holds a certificate of authority to do  
20 business within the State. For purposes of this subsection, the  
21 policy must contain the following provisions.

22 A. In the event that the home service company is unable to  
23 fulfill its obligation under its contracts issued in this  
24 State for any reason, including insolvency, bankruptcy or  
25 dissolution, the insurer will pay claims and administrative  
26 expenses directly to persons making claims under the  
27 contracts.

28 B. The policy may not be canceled or not renewed unless 60  
29 days' written notice of the cancellation has been given to  
30 the home service company and to the bureau by the insurer  
31 before the date of such cancellation or nonrenewal.

34 §4718. License expiration; renewal

36 Each home service company license issued under this chapter  
37 expires on February 28th of even-numbered years. In the absence  
38 of any reason or condition warranting refusal to grant a license,  
39 the home service company license may be renewed biennially upon  
40 request and upon payment of the license fee in the amount of  
41 \$1,000.

42 §4719. Filing of forms; appointment of agents

44 1. Restrictions on activity. A home service contract may  
45 not be issued or used in this State unless it has been filed with  
46 and approved by the superintendent.

48 2. Filing in advance. Each home service contract must be  
49 filed not less than 30 days in advance of its intended issuance  
50 or use. At the expiration of 30 days from the date of filing, a  
51 home service contract so filed is deemed approved unless, prior  
52 to the expiration of 30 days from the date of filing, a

2 to the expiration of the 30-day period, it has been approved or  
3 disapproved by written order of the superintendent.

4 3. Approval of contract. The superintendent may not  
5 approve any home service contract unless it:

6 A. Is written in nontechnical, understandable language  
7 using words with common meanings and is printed in 10-point  
8 print or greater;

9 B. Clearly, conspicuously and plainly specifies:

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

12 (2) The contract fee and any other costs to be  
13 incurred by the contract holder;

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

15 (4) All exclusions and limitations with respect to the  
16 extent of coverage;

17 (5) The period during which the contract will remain  
18 in effect; and

19 (6) All limitations respecting the performance of  
20 services, including any restrictions on the time  
21 periods when services may be requested or will be  
22 performed; and

23 C. Includes reasonable procedures for reporting a claim,  
24 without requiring the filing of claim forms or applications,  
25 and provides for the performance of services within a  
26 reasonable time from the date the claim was reported.

27 4. Appointment of agents. Each home service company  
28 appointing a home service company sales agent in this State must  
29 file the appointment in writing with the superintendent.

30 **§4720. Annual statement; examination**

31 1. Time of filing; financial statement. Each home service  
32 company must file annually with the superintendent, within 90  
33 days of the close of its fiscal year, its annual statement in a  
34 form prescribed by or acceptable to the superintendent. The  
35 annual statement must include a current financial statement,  
36 including a balance sheet, an income statement and a statement of  
37 cash flow prepared in accordance with generally accepted  
38 accounting principles and certified by an independent certified  
39 public accountant.



2        2. Contracts. Each annual statement must include the  
3        number of home service contracts issued during the preceding  
4        fiscal year, the number canceled or expired during the year, the  
5        number in effect at year end and the amount of all contract fees  
6        received for contracts issued during the year.

7        3. Reserve. Each annual statement must demonstrate that  
8        the reserve requirement of section 4717, subsection 1 has been  
9        met.

10       4. Failure to file. Any home service company neglecting to  
11       file the annual statement in the form and within the time  
12       provided by this section forfeits \$100 for each day during which  
13       the neglect continues and, upon notice by the superintendent to  
14       that effect, its authority to do business in this State ceases  
15       while the default continues.

16       5. Additional reports. In addition to an annual statement,  
17       the superintendent may require of licensees, under oath and in  
18       the form prescribed, any additional regular or special reports  
19       considered necessary for the proper supervision of licensees  
20       under this subchapter.

21       6. Examination. The superintendent may make an examination  
22       of the affairs of any licensed home service company or home  
23       service agent as considered necessary. Each home service company  
24       and home service agent shall make its books and records of its  
25       home service contract operations available for examination. All  
26       expenses of the examination must be borne by the home service  
27       company or home service agent being examined.

28       §4721. Service of process; appointment of superintendent as  
29       process agent

30       1. Irrevocable appointment. Each home service company  
31       applying for authority to transact business in this State,  
32       whether domestic or foreign, shall appoint the superintendent as  
33       its agent to receive service of all legal process issued against  
34       it in any civil action or proceeding in this State and must agree  
35       that process so served is valid and binding upon the home service  
36       company. The appointment is irrevocable, binds the home service  
37       company and any successor in interest as to the assets or  
38       liabilities of the home service company and remains in effect as  
39       long as there are any obligations or liabilities of the home  
40       service company outstanding in this State that result from its  
41       home service contract transactions.

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

2           3. Method of service. Service is made by serving copies in  
3 triplicate of the process upon the superintendent or other person  
4 in charge of the superintendent's office. Upon receiving the  
5 service, the superintendent must file one copy, return one copy  
6 with acknowledgement of service and promptly forward one copy of  
7 the process by registered or certified mail to the person last  
8 designated by the home service company to receive the copy as  
9 provided in subsection 2.

10 §4722. Suspension or revocation of license or denial of renewal

11           1. Grounds. Notwithstanding Title 5, chapter 375,  
12 subchapter VI, after notice and opportunity for hearing the  
13 superintendent may deny, revoke, suspend or limit the permissible  
14 activities under any license issued or applied for under this  
15 chapter or may levy penalties as provided in section 12-A if the  
16 superintendent finds that:

17           A. There is cause for which issuance of the license could  
18 have been refused had it then existed and been known to the  
19 superintendent;

20           B. The applicant or licensee has violated or failed to  
21 comply with any applicable provision of this chapter,  
22 chapter 23 or for violation of any lawful rule or order of  
23 the superintendent;

24           C. The applicant or licensee has obtained or attempted to  
25 obtain licensure through misrepresentation, has failed to  
26 disclose a material fact required to be disclosed in the  
27 application or has committed fraud;

28           D. The licensee has illegally withheld money belonging to  
29 holders or others received in the conduct of business under  
30 the license;

31           E. The licensee, in the conduct of its affairs under the  
32 license, has used fraudulent, coercive or dishonest  
33 practices or has been shown to be incompetent,  
34 untrustworthy, financially irresponsible or a source of  
35 injury and loss to the public;

36           F. The licensee has refused to be examined under section  
37 4720, subsection 6 or to produce its accounts, records and  
38 files for examination or its officers have refused to give  
39 information with respect to its affairs or have refused to  
40 perform any other legal obligation as to that examination  
41 when required by the superintendent;

2 G. The licensee has failed to pay any final judgment  
4 rendered against it in this State within 60 days after the  
6 judgment became final;

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

22 I. The licensee has failed to maintain a single-funded  
24 reserve for its liability to furnish repairs and replacement  
26 services under its issued and outstanding contracts as  
28 required under section 4717, subsection 1; or

30 J. There is cause for suspension without notice under  
32 subsection 2.

34 2. Suspension without notice. Notwithstanding the Maine  
36 Administrative Procedure Act, the superintendent may immediately  
38 suspend the license of any home service company without advance  
40 notice or hearing for up to 30 days if the superintendent finds  
42 that:

44 A. The home service company is insolvent or impaired;

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

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

38 **§4723. Automatic termination of sales agent registration**

40 Revocation, suspension or nonrenewal of a home service  
42 company license automatically terminates the registration of its  
44 sales agents.

46 **§4724. Notice of suspension or revocation of license**

48 Suspension or revocation of a home service company's license  
50 must be by an order mailed to the home service company by  
52 registered or certified mail. 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.

2 **§4725. Limitations and obligations during suspension period;**  
3 **reinstatement**

4 **1. Limitation on activity.** The home service company may  
5 not solicit or write any new home service contracts in this State  
6 during any period of suspension or revocation.

8 **2. Obligations.** During the period of suspension, the home  
9 service company shall file its annual statement and pay license  
10 and other fees, as required under this chapter, as if the license  
11 had continued in full force.

12 **3. Reinstatement.** Upon expiration of the suspension  
13 period, if within that period the license has not otherwise  
14 terminated, the home service company's license is automatically  
15 reinstated unless it is determined by the superintendent that the  
16 causes of suspension have not been removed or, after notice and  
17 hearing, it is found that the home service company is not in  
18 compliance with the requirements of this chapter.

20 **4. Authority of company.** Upon reinstatement of the home  
21 service company's license following suspension, the authority of  
22 the home service company sales agents in this State to represent  
23 the home service company is reinstated.

26 **§4726. Home service company sales agent; certificate of**  
27 **registration**

28 **1. Form.** Each application for a certificate of  
29 registration must be on a form prescribed by or acceptable to the  
30 superintendent.

32 **2. Registration required; fee.** A home service company  
33 sales agent may not solicit, negotiate, sell, advertise or  
34 effectuate home service contracts in this State on behalf of a  
35 home service company unless registered with the superintendent.  
36 Each real estate agency and each individual employed within the  
37 agency who is or will be acting as a home service company sales  
38 agent must be registered with the superintendent and pay a  
39 biennial registration fee of \$30.

42 **3. Certificate expiration; renewal.** Each certificate of  
43 registration issued under this chapter expires on September 1st  
44 of even numbered years. In the absence of any reason or  
45 condition warranting refusal of a certificate of registration,  
46 the sales agent certificate of registration may be renewed  
47 biennially upon request and upon payment of the license fee in  
48 the amount of \$30.

50 **4. Requirements.** A sales agent may not be issued a  
51 certificate of registration unless:

2 A. A licensed home service company has notified the  
4 superintendent pursuant to section 4719, subsection 4 that  
the applicant or the agency who employs the applicant is  
appointed to act as a home service company agent; and

6 B. The applicant personally holds a current and active real  
8 estate license.

10 3. Compliance with insurance laws. A home service company  
12 sales agent may not directly or indirectly solicit or negotiate  
insurance contracts or represent itself to be an insurance agent,  
unless it is a licensed insurance agent.

14 4. Trust funds. All funds belonging to home service  
16 companies or holders under this chapter and received by a sales  
18 agent in transactions are trust funds received in a fiduciary  
20 capacity. The sales agent shall account for and pay those funds  
to the agency, home service company or insurer entitled to those  
funds in the regular course of business.

22 §4727. Grounds for suspension, revocation or denial of  
certificate of registration

24 1. Grounds. Notwithstanding Title 5, chapter 375,  
26 subchapter VI, after notice and opportunity for hearing the  
28 superintendent may deny, revoke, suspend or limit the permissible  
activities under any certificate of registration issued or  
applied for under this chapter, or may levy penalties as provided  
in section 12-A, if the superintendent finds that:

30 A. The applicant or home service contract sales agent has  
32 acted as a sales agent without being registered with the  
34 superintendent or after that agent's registration has been  
withdrawn or revoked;

36 B. There is any cause for which issuance of the certificate  
38 could have been refused had it then existed and been known  
to the superintendent;

40 C. The applicant or agent has violated or failed to comply  
42 with any applicable provision of this chapter or chapter 23  
or has willfully violated any lawful rule or order of the  
44 superintendent;

46 D. The applicant or agent has obtained or attempted to  
obtain a certificate of registration through  
48 misrepresentation;

50 E. The applicant or agent misappropriates or converts to  
the applicant's or agent's own use, illegally withholds or  
52 fails to remit money belonging to holders or others and  
received in the conduct of business under the certificate;

2           F. The agent has, in the conduct of the agent's affairs  
4           under the certificate, used fraudulent, coercive or  
6           dishonest practices or has been shown to be incompetent,  
          untrustworthy, financially irresponsible or a source of  
          injury and loss to the public;

8           G. The agent has refused to be examined or to produce  
10           requested accounts, records and files for examination when  
          required by the superintendent; or

12           H. The agent is the subject of disciplinary action by the  
14           Real Estate Commission.

16           **§4728. Additional penalties**

18           If a person acts as a sales agent without being registered  
20           with the superintendent or after that person's registration has  
22           been withdrawn or revoked, that person must be fined up to \$100 a  
24           day for each day in which that person has acted as a sales agent,  
          but any home service contract issued pursuant to these acts binds  
          the home service company if otherwise valid. In these cases, the  
          superintendent may, 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.

26           Sec. 2. 32 MRSA §§13221 to 13224, as enacted by PL 1987, c.  
28           395, Pt. A, §212, are repealed.

30           Sec. 3. 32 MRSA §13225, as amended by PL 1989, c. 502, Pt. B,  
32           §39, is repealed.

34           Sec. 4. 32 MRSA §§13226 to 13238, as enacted by PL 1987, c.  
          395, Pt. A, §212, are repealed.

36           **Sec. 5. Transitional provisions.**

38           1. — Any home service company that is unable to meet the  
40           capital funds requirement in the Maine Revised Statutes, Title  
42           24-A, section 4717, subsection 2 as of January 1, 1992 has until  
          January 1, 1994 to meet that requirement as long as it can meet  
          the following capital funds requirements:

44           A. As of January 1, 1992, the capital funds requirement is  
46           \$300,000;

48           B. As of January 1, 1993, the capital funds requirement is  
          \$400,000; and

50           C. As of January 1, 1994 and thereafter, the capital funds  
52           requirement is \$500,000.

2. All licenses issued to home service companies and home service contract sales agents by the Real Estate Commission expire by operation of law on January 1, 1992.

3. Licenses issued to home service companies by the Bureau of Insurance prior to February 28, 1992 expire February 28, 1994.

4. Certificates of registration issued to home service contract sales agents prior to September 1, 1992 expire September 1, 1994.

Sec. 6. Effective date. This Act takes effect on January 1, 1992.

### STATEMENT OF FACT

Currently, home service contracts are regulated under the jurisdiction of the Real Estate Commission pursuant to the Maine Revised Statutes, Title 32. This bill removes authority for regulation of home service contracts from the Real Estate Commission and places it within the jurisdiction of the Bureau of Insurance. In order to allow the Superintendent of Insurance to regulate the sales of home service warranties more efficiently and effectively, this bill stipulates specific financial requirements for companies that offer home service warranties and provides a more detailed mechanism for enforcement of the laws.