

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1640

S.P. 573

In Senate, March 3, 1999

An Act Regarding Service Contracts.

Reference to the Committee on Banking and Insurance 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 ABROMSON of Cumberland.
Cosponsored by Representatives: JONES of Pittsfield, MAYO of Bath, O'NEIL of Saco,
PERRY of Bangor.

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

2 **Sec. 1. 24-A MRSA c. 87** is enacted to read:

4
6 **CHAPTER 87**

8 **SERVICE CONTRACTS**

10 **§7001. Scope and purpose**

12 **1. Purpose.** The purpose of this chapter is to create a
14 **legal framework within which service contracts may be sold in**
16 **this State.**

18 **2. General exemptions.** The following are exempt from the
20 **provisions of this Title, including the other provisions of this**
22 **chapter:**

24 **A. Warranties;**

26 **B. Maintenance agreements;**

28 **C. Warranties, service contracts and maintenance agreements**
30 **offered by public utilities on their transmission devices to**
32 **the extent they are regulated by the Public Utilities**
34 **Commission; and**

36 **D. Service contracts sold or offered for sale to persons**
38 **other than consumers.**

40 **3. Service contract provider exemptions.** The marketing,
42 **sale, offering for sale, issuance, making, proposing to make and**
44 **administration of service contracts by providers and related**
46 **service contract sellers, administrators and other persons are**
48 **subject to the provisions of this chapter and exempt from all**
50 **other provisions of this Title.**

52 **§7002. Definitions**

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

1. Administrator. "Administrator" means the person who is
 responsible for the administration of the service contracts or
 who is responsible for any filings required by this chapter.

2. Consumer. "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 business or
 research purposes.

2 **3. Maintenance agreement.** "Maintenance agreement" means a
3 contract of limited duration that provides for scheduled
4 maintenance only.

6 **4. Nonoriginal manufacturer's parts.** "Nonoriginal
7 manufacturer's parts" means replacement parts not made for or by
8 the original manufacturer of the property, commonly referred to
9 as "after market parts."

10 **5. Person.** "Person" means an individual, partnership,
11 corporation, incorporated or unincorporated association, joint
12 stock company, reciprocal exchange, syndicate or any similar
13 entity or combination of entities acting in concert.

14 **6. Premium.** "Premium" means the consideration paid to an
15 insurer for a reimbursement insurance policy.

16 **7. Provider.** "Provider" means a person who is
17 contractually obligated to the service contract holder under the
18 terms of the service contract.

19 **8. Provider fee.** "Provider fee" means the consideration
20 paid for a service contract.

21 **9. Reimbursement insurance policy.** "Reimbursement
22 insurance policy" means a policy of insurance that is issued to a
23 provider to reimburse the provider or to pay on behalf of the
24 provider all covered contractual obligations incurred by the
25 provider under the terms of the insured service contracts issued
26 or sold by the provider.

27 **10. Service contract.** "Service contract" means a contract
28 or agreement for a separately stated consideration for a specific
29 duration to perform the repair, replacement or maintenance of
30 property or indemnification for repair, replacement or
31 maintenance for the operational or structural failure due to a
32 defect in materials or workmanship or normal wear and tear, with
33 or without additional provision for incidental payment or
34 indemnity under limited circumstances, including, but not limited
35 to, towing, rental and emergency road service. Service contracts
36 may provide for the repair, replacement or maintenance of
37 property for damage resulting from power surges and accidental
38 damage from handling.

39 **11. Service contract holder or contract holder.** "Service
40 contract holder" or "contract holder" means a person who is the
41 purchaser or holder of a service contract.

42 **12. Warranty.** "Warranty" means a warranty made solely by
43 the manufacturer, importer or seller of property or services
44 without consideration that is not negotiated or separated from

2 the sale of the product and is incidental to the sale of the
3 product and that guarantees indemnity for defective parts,
4 mechanical or electrical breakdown, labor or other remedial
5 measures, such as repair or replacement of the property or
6 repetition of services.

7 **§7003. Requirements for doing business**

8
9 **1. Administrator.** A provider may, but is not required to,
10 appoint an administrator or other designee to be responsible for
11 any or all of the administration of service contracts and
12 compliance with this chapter.

13 **2. Service contract.** A service contract may not be issued,
14 sold or offered for sale in this State unless the provider has:

15 **A.** Provided a receipt for, or other written evidence of,
16 the purchase of the service contract to the contract holder;
17 and

18 **B.** Provided a copy of the service contract to the service
19 contract holder within a reasonable period of time from the
20 date of purchase.

21 **3. Registration.** A provider of service contracts sold in
22 this State shall file a registration with the superintendent on a
23 form prescribed by the superintendent. A provider shall pay to
24 the superintendent a fee in the amount of \$500 annually.

25 **4. Performance.** In order to ensure the faithful performance
26 of a provider's obligations to its service contract holders, each
27 provider shall:

28 **A.** Insure all service contracts under a reimbursement
29 insurance policy issued by an insurer authorized to transact
30 insurance in this State or issued pursuant to chapter 19;

31 **B. Undertake to:**

32 **(1)** Maintain a funded reserve account for its
33 obligations under its service contracts issued and
34 outstanding in this State. The reserves may not be
35 less than 40% of the gross consideration received, less
36 claims paid, on the sale of the service contract for
37 all contracts in force. The reserve account is subject
38 to examination and review by the superintendent; and

39 **(2)** Place in trust with the superintendent a financial
40 security deposit, having a value of not less than 5% of
41 the gross consideration received, less claims paid, on
42 the sale of the service contract for all service
43 contracts.

2 contracts issued and in force, but not less than
3 \$25,000, consisting of:

4 (a) A surety bond issued by an authorized surety;

6 (b) Securities of the type eligible for deposit
7 by authorized insurers in this State;

8 (c) Cash;

10 (d) A letter of credit issued by a qualified
12 financial institution; or

14 (e) Another form of security prescribed by
16 regulations issued by the superintendent; or

18 C. Undertake to:

20 (1) Maintain, or have its parent company maintain, a
22 net worth or stockholders' equity of at least
23 \$100,000,000; and

24 (2) Upon request, provide the superintendent with a
25 copy of the provider's or its parent company's most
26 recent Form 10-K or Form 20-F filed with the United
27 States Securities and Exchange Commission within the
28 last calendar year or, if the company does not file
29 with the United States Securities and Exchange
30 Commission, a copy of the provider's or its parent
31 company's audited financial statements that show a net
32 worth of the provider or its parent company of at least
33 \$100,000,000. If the parent company's Form 10-K, Form
34 20-F or audited financial statements are filed to meet
35 the provider's financial stability requirement, then
36 the parent company shall agree to guarantee the
37 obligations of the provider relating to service
38 contracts sold by the provider in this State.

40 5. Right to void. Service contracts must require the
41 provider to permit the service contract holder to return the
42 service contract within 20 days of the date the service contract
43 was mailed to the service contract holder or within 10 days of
44 delivery if the service contract is delivered to the service
45 contract holder at the time of sale or within a longer time
46 period permitted under the service contract. Upon return of the
47 service contract to the provider within the applicable time
48 period, if no claim has been made under the service contract
49 prior to its return to the provider, the service contract is void
50 and the provider shall refund to the service contract holder, or
51 credit the account of the service contract holder, with the full
52 purchase price of the service contract. The right to void the
service contract provided in this subsection is not transferable

2 and applies only to the original service contract purchaser and
3 only if no claim has been made prior to its return to the
4 provider. A 10% penalty per month must be added to a refund that
5 is not paid or credited within 45 days after return of the
6 service contract to the provider.

7 6. Premium taxes. Provider fees collected on service
8 contracts are not subject to premium taxes. Premiums for
9 reimbursement insurance policies are subject to applicable taxes.

10 7. Licensing exemptions. Except for the registration
11 requirement in subsection 3, providers and related service
12 contract sellers, administrators and other persons marketing,
13 selling or offering to sell service contracts are exempt from any
14 licensing requirements of this State.

15 **§7004. Required provisions; reimbursement insurance policy**

16 1. Statement of policy. Reimbursement insurance policies
17 insuring service contracts issued, sold or offered for sale in
18 this State must state that the insurer that issued the
19 reimbursement insurance policy shall reimburse or pay on behalf
20 of the provider any covered sums the provider is legally
21 obligated to pay or shall provide the service that the provider
22 is legally obligated to perform according to the provider's
23 contractual obligations under the insured service contracts
24 issued or sold by the provider.

25 2. Application to reimbursement insurance company. In the
26 event covered service is not provided by the service contract
27 provider within 60 days of proof of loss by the service contract
28 holder, the contract holder is entitled to apply directly to the
29 reimbursement insurance company.

30 **§7005. Required disclosures; service contracts**

31 1. Disclosures. Service contracts marketed, sold, offered
32 for sale, issued, made, proposed to be made or administered in
33 this State must be written, printed or typed in clear,
34 understandable language that is easy to read and must disclose
35 the requirements set forth in this section, as applicable.

36 A. Service contracts insured under a reimbursement
37 insurance policy pursuant to section 7003, subsection 4,
38 paragraph A must contain a statement in substantially the
39 following form: "Obligations of the provider under this
40 service contract are insured under a service contract
41 reimbursement insurance policy." The service contract must
42 state the name and address of the insurer.

43 B. Service contracts not issued under a reimbursement
44 insurance policy pursuant to section 7003, subsection 4,
45 paragraph A must contain a statement in substantially the
46 following form: "Obligations of the provider under this
47 service contract are insured under a service contract
48 reimbursement insurance policy." The service contract must
49 state the name and address of the insurer.

2 paragraph A must contain a statement in substantially the
3 following form: "Obligations of the provider under this
4 service contract are backed by the full faith and credit of
5 the provider."

6 C. Service contracts must state the name and address of the
7 provider and must identify any administrator other than the
8 provider, the service contract seller and the service
9 contract holder to the extent that the name of the service
10 contract holder has been furnished by the service contract
11 holder. The identities of such parties are not required to
12 be preprinted on the service contract and may be added to
13 the service contract at the time of sale.

14 D. Service contracts must state the purchase price of the
15 service contract and the terms under which the service
16 contract is sold. The purchase price is not required to be
17 preprinted on the service contract and may be negotiated at
18 the time of sale with the service contract holder.

19 E. Service contracts must state the existence of any
20 deductible amount, if applicable.

21 F. Service contracts must specify the merchandise and
22 services to be provided and any limitations, exceptions or
23 exclusions.

24 G. Service contracts covering automobiles must state
25 whether the use of nonoriginal manufacturer's parts is
26 allowed.

27 H. Service contracts must state any restrictions governing
28 the transferability of the service contract, if applicable.

29 I. Service contracts must state the terms, restrictions or
30 conditions governing cancellation of the service contract
31 prior to the termination or expiration date of the service
32 contract by either the provider or the service contract
33 holder. The provider of the service contract shall mail a
34 written notice to the service contract holder at the last
35 known address of the service contract holder contained in
36 the records of the provider at least 5 days prior to
37 cancellation by the provider. Prior notice is not required
38 if the reason for cancellation is nonpayment of the provider
39 fee, a material misrepresentation by the service contract
40 holder to the provider or a substantial breach of duties by
41 the service contract holder relating to the covered product
42 or its use. The notice must state the effective date of the
43 cancellation and the reason for the cancellation.

44 J. Service contracts must set forth the obligations and
45 duties of the service contract holder, such as the duty to
46

2 protect against any further damage and any requirement to
3 follow instructions in an owner's manual.

4 K. Service contracts must state whether or not the service
5 contract provides for or excludes consequential damages or
6 preexisting conditions, if applicable.

8 **§7006. Prohibited acts**

10 1. Prohibited names. A provider may not use in its name
11 the words "insurance," "casualty," "surety," "mutual" or any
12 other words descriptive of the insurance, casualty or surety
13 business and may not use a name deceptively similar to the name
14 or description of any insurance or surety corporation or to the
15 name of any other provider. The word "guaranty" or similar word
16 may be used by a provider. This section does not apply to a
17 company that was using any of the prohibited language in its name
18 prior to the effective date of this chapter; however, a company
19 using the prohibited language in its name shall include in its
20 service contracts a statement in substantially the following
21 form: "This agreement is not an insurance contract."

22
23 2. Misleading statements. A provider or its representative
24 may not in its service contracts or literature make, permit or
25 cause to be made any false or misleading statement or
26 deliberately omit any material statement that would be considered
27 misleading if omitted.

28
29 3. Prohibited conditions of sale. A person, such as a
30 bank, savings and loan association, lending institution,
31 manufacturer or seller of any product, may not require the
32 purchase of a service contract as a condition of a loan or a
33 condition for the sale of any property.

34 **§7007. Record-keeping requirements**

35
36 1. Books and records. A provider shall keep books and
37 records in accordance with this section.

38
39 A. The provider shall keep accurate accounts, books and
40 records concerning transactions regulated under this chapter.

41
42 B. The provider's accounts, books and records must include:

43
44 (1) Copies of each type of service contract sold;

45
46 (2) The name and address of each service contract
47 holder, to the extent that the name and address have
48 been furnished by the service contract holder;

49
50 (3) A list of the locations where service contracts are
51 marketed, sold or offered for sale; and
52

2 (4) Written claims files, which must contain at least
4 the dates and description of claims related to the
 service contracts.

6 C. Except as provided in subsection 2, the provider
8 shall retain all records required to be maintained by this
 subsection for at least one year after the specified period
 of coverage has expired.

10 D. The records required under this chapter may be, but are
12 not required to be, maintained on a computer disk or other
14 record-keeping medium. If the records are maintained in
16 other than hard copy, the records must be capable of
 duplication to legible hard copy at the request of the
 superintendent.

18 2. Discontinuance of business. A provider discontinuing
20 business in this State shall maintain its records until it
22 furnishes the superintendent satisfactory proof that it has
 discharged all obligations to service contract holders in this
 State.

24 **§7008. Cancellation of reimbursement insurance policy**

26 1. Termination. An insurer that issued a reimbursement
28 insurance policy may not terminate the policy until a notice of
30 cancellation in accordance with the provisions of section 7005
32 has been mailed or delivered to the superintendent. The
 cancellation of a reimbursement insurance policy does not reduce
 the issuer's responsibility for service contracts issued by
 providers prior to the date of the cancellation.

34 **§7009. Obligations of reimbursement insurance policy insurers**

36 1. Agency. Providers are considered to be the agent of the
38 insurer that issued the reimbursement insurance policy for
40 purposes of obligating the insurer to service contract holders in
42 accordance with the service contract and this chapter. When a
44 provider is acting as an administrator and enlists other
 providers, the provider acting as the administrator shall notify
 the insurer of the existence and identities of the other
 providers.

46 2. Other rights. This chapter does not prevent or limit
48 the right of an insurer that issued a reimbursement insurance
50 policy to seek indemnification or subrogation against a provider
 if the issuer pays or is obligated to pay the service contract
 holder sums that the provider was obligated to pay pursuant to
 the provisions of the service contract.

52 **§7010. Enforcement provisions**

2 1. Examinations. The superintendent may conduct
3 examinations of providers, administrators, insurers or other
4 persons to enforce this chapter and protect service contract
5 holders in this State. Upon request of the superintendent, the
6 provider shall make all accounts, books and records concerning
7 service contracts sold by the provider that are necessary to
8 enable the superintendent to reasonably determine compliance or
9 noncompliance with this chapter available to the superintendent.

10 2. Enforcement. The superintendent may take action as
11 necessary or appropriate to enforce the provisions of this
12 chapter and the superintendent's rules and orders adopted
13 pursuant to this chapter and to protect service contract holders
14 in this State.

15 A. If a provider has violated this chapter or the
16 superintendent's rules or orders, the superintendent may:

17 (1) Issue an order directed to that provider to cease
18 and desist from committing violations of this chapter
19 or the superintendent's rules or orders;

20 (2) Issue an order prohibiting that provider from
21 selling or offering for sale service contracts in
22 violation of this chapter;

23 (3) Issue an order imposing a civil penalty on that
24 provider; or

25 (4) Issue any combination of orders, as applicable.

26 B. A person aggrieved by an order issued under this section
27 may request a hearing before the superintendent. The
28 hearing request must be filed with the superintendent within
29 20 days of the date the superintendent's order is effective.

30 C. If a hearing is requested, an order issued by the
31 superintendent under this section must be suspended from the
32 original effective date of the order until completion of the
33 hearing and final decision of the superintendent.

34 D. At the hearing, the burden is on the superintendent to
35 show why the order issued pursuant to this section is
36 justified. The provisions of the Maine Administrative
37 Procedure Act apply to a hearing requested under this
38 section.

39 3. Civil action. The superintendent may bring an action in
40 any court of competent jurisdiction for an injunction or other
41 appropriate relief to enjoin threatened or existing violations of
42 this chapter or of the superintendent's rules. An action filed
43 in any court of competent jurisdiction shall not be stayed or
44 dismissed on the ground that the action is not ripe for
45 consideration.

2 under this section also may seek restitution on behalf of persons
3 aggrieved by a violation of this chapter or rules of the
4 superintendent.

6 4. Penalties. A person who is found to have violated this
7 chapter or rules of the superintendent may be ordered in an
8 adjudicatory proceeding to pay to the superintendent a civil
9 penalty in an amount determined by the superintendent of not more
10 than \$500 per violation and not more than \$10,000 in the
11 aggregate for all violations of a similar nature. For purposes
12 of this section, violations are of a similar nature if the
13 violations consist of the same or similar course of conduct,
14 action or practice, irrespective of the number of times the act,
15 conduct or practice that is determined to be a violation of this
16 chapter occurred.

18 **§7011. Authority to develop rules**

20 The superintendent may adopt rules necessary to implement
21 this chapter. Rules adopted pursuant to this section are routine
22 technical rules as defined in Title 5, chapter 375, subchapter
23 II-A.

24 **§7012. Effective date**

26 1. Application. Service contracts entered into prior to
27 January 1, 2000, and renewals of those contracts, may, but are
28 not required to, comply with this chapter. Providers and other
29 persons are not required to comply with this chapter until
30 January 1, 2000. A provider or other person may, but is not
31 required to, implement the requirements of this chapter prior to
32 January 1, 2000. The failure of a provider or other person to
33 comply with this chapter or otherwise to administer a service
34 contract in the manner required by this chapter prior to January
35 1, 2000 is not admissible in any court, arbitration or
36 alternative dispute resolution proceedings and that failure may
37 not be otherwise used to prove that the action of any person or
38 the service contract was unlawful or otherwise improper.

40 **SUMMARY**

42 This bill establishes regulatory standards for providers of
43 service contracts and exempts these contracts from all other
44 provisions of the Maine Insurance Code. It also exempts from
45 the Maine Insurance Code:

- 48 1. Warranties;
49
50 2. Maintenance agreements;

2 3. Warranties, service contracts and maintenance agreements
3 offered by public utilities on their transmission devices to the
4 extent they are regulated by the Public Utilities Commission; and

5 4. Service contracts sold or offered for sale to persons
6 other than consumers.