

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 491

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S.P. 147

In Senate, February 6, 2001

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**An Act Regarding Service Contracts.**

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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 Representative DUDLEY of Portland and  
Senator SAWYER of Penobscot.

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

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

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  
this State.

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

20 A. Warranties;

22 B. Maintenance agreements;

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

28 D. Service contracts sold or offered for sale to persons  
30 other than consumers; and

32 E. Service contracts on tangible property when the tangible  
34 property for which the service contract is sold has a  
purchase price of \$350 or less, exclusive of sales tax.

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

42 4. Motor vehicle manufacturer's service contracts. Motor  
44 vehicle manufacturer's service contracts on the motor vehicle  
46 manufacturer's products must comply only with section 7003,  
subsection 5; section 7005, subsection 1, first paragraph;  
48 section 7005, subsection 1, paragraphs C to K; section 7006; and  
section 7010 and are exempt from the other provisions of this  
Title.

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**§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 responsible for the administration of the service contracts or 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.

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

4. Motor vehicle manufacturer. "Motor vehicle manufacturer" means a person that:

A. Manufactures or produces motor vehicles and sells motor vehicles under its own name or label;

B. Is a wholly owned subsidiary of the person that manufactures or produces motor vehicles;

C. Is a corporation that owns 100% of the person that manufactures or produces motor vehicles;

D. Does not manufacture or produce motor vehicles, but sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles;

E. Manufactures or produces motor vehicles and sells such motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles; or

F. Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person that manufactures or produces motor vehicles and that sells motor vehicles under the licensor's trade name or label.

5. Nonoriginal manufacturer's parts. "Nonoriginal manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property, commonly referred to as "aftermarket parts."

2        6. Person. "Person" means an individual, partnership,  
3        corporation, incorporated or unincorporated association, joint  
4        stock company, reciprocal exchange, syndicate or any similar  
5        entity or combination of entities acting in concert.

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

8        8. Provider. "Provider" means a person contractually  
9        obligated to the service contract holder under the terms of the  
10       service contract.

11       9. Provider fee. "Provider fee" means the consideration  
12       paid for a service contract.

13       10. Reimbursement insurance policy. "Reimbursement  
14       insurance policy" means a policy of insurance that is issued to a  
15       provider to reimburse the provider or to pay on behalf of the  
16       provider all covered contractual obligations incurred by the  
17       provider under the terms of the insured service contracts issued  
18       or sold by the provider.

19       11. Service contract. "Service contract" means a contract  
20       or agreement for a separately stated consideration for a specific  
21       duration to perform the repair, replacement or maintenance of  
22       property or for indemnification for repair, replacement or  
23       maintenance for operational or structural failure due to a defect  
24       in materials or workmanship or normal wear and tear, with or  
25       without additional provision for incidental payment or indemnity  
26       under limited circumstances, including, but not limited to,  
27       towing, rental and emergency road service. Service contracts may  
28       provide for the repair, replacement or maintenance of property  
29       for damage resulting from power surges and accidental damage from  
30       handling.

31       12. Service contract holder or contract holder. "Service  
32       contract holder" or "contract holder" means a purchaser or holder  
33       of a service contract.

34       13. Warranty. "Warranty" means a warranty made solely by  
35       the manufacturer, importer or seller of property or services  
36       without consideration that is not negotiated or separated from  
37       the sale of the product and is incidental to the sale of the  
38       product and that guarantees indemnity for defective parts,  
39       mechanical or electrical breakdown, labor or other remedial  
40       measures, such as repair or replacement of the property or  
41       repetition of services.

42       §7003. Requirements for doing business

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2 1. Administrator. A provider may, but is not required to,  
3 appoint an administrator or other designee to be responsible for  
4 any or all of the administration of service contracts and for  
5 compliance with this chapter.

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

8  
9 A. Provided a receipt for, or other written evidence of,  
10 the purchase of the service contract to the contract holder;  
11 and

12  
13 B. Provided a copy of the service contract to the service  
14 contract holder within a reasonable period of time from the  
15 date of purchase.

16  
17 3. Registration. A provider of service contracts sold in  
18 this State shall file a registration with the superintendent on a  
19 form prescribed by the superintendent. A provider shall pay to  
20 the superintendent a fee in the amount of \$200 annually.

21  
22 4. Performance. In order to ensure the faithful performance  
23 of a provider's obligations to its service contract holders, a  
24 provider shall:

25  
26 A. Insure all service contracts under a reimbursement  
27 insurance policy issued by an insurer authorized to transact  
28 insurance in this State or issued pursuant to chapter 19;

29  
30 B. Undertake to:

31  
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  
40 (2) Place in trust with the superintendent a financial  
41 security deposit, having a value of not less than 5% of  
42 the gross consideration received, less claims paid, on  
43 the sale of the service contract for all service  
44 contracts issued and in force, but not less than  
45 \$25,000, consisting of:

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

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

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(c) Cash;

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

(e) Another form of security prescribed by rule issued by the superintendent; or

C. Undertake to:

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

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

Except for the requirement specified in this subsection, other financial security requirements may not be required by the superintendent for service contract providers.

5. Right to void. Service contracts must require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale or within a longer time period permitted under the service contract. Upon return of the service contract to the provider within the applicable time period, if a claim has not been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder with, the full purchase price of the service contract. The right to void the service contract provided in this subsection is not transferable and applies only to the original service contract purchaser and

2 only if a claim has not been made prior to its return to the  
3 provider. A 10% penalty per month must be added to a refund that  
4 is not paid or credited within 45 days after return of the  
5 service contract to the provider.

6 6. Premium taxes. Provider fees collected on service  
7 contracts are not subject to premium taxes. Premiums for  
8 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.

16 **§7004. Required provisions; reimbursement insurance policy**

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

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

34 **§7005. Required disclosures; service contracts**

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

42 A. Service contracts insured under a reimbursement  
43 insurance policy pursuant to section 7003, subsection 4,  
44 paragraph A must contain a statement in substantially the  
45 following form: "Obligations of the provider under this  
46 service contract are insured under a service contract  
47 reimbursement insurance policy." The service contract must  
48 state the name and address of the insurer.



2 B. Service contracts not issued under a reimbursement  
4 insurance policy pursuant to section 7003, subsection 4,  
6 paragraph A must contain a statement in substantially the  
8 following form: "Obligations of the provider under this  
10 service contract are backed by the full faith and credit of  
12 the provider."

14 C. Service contracts must state the name and address of the  
16 provider and must identify any administrator other than the  
18 provider, the service contract seller and the service  
20 contract holder to the extent that the name of the service  
22 contract holder has been furnished by the service contract  
24 holder. The identities of the parties are not required to  
26 be preprinted on the service contract and may be added to  
28 the service contract at the time of sale.

30 D. Service contracts must state the purchase price of the  
32 service contract and the terms under which the service  
34 contract is sold. The purchase price is not required to be  
36 preprinted on the service contract and may be negotiated at  
38 the time of sale with the service contract holder.

40 E. Service contracts must state the existence of any  
42 deductible amount, if applicable.

44 F. Service contracts must specify the merchandise and  
46 services to be provided and any limitations, exceptions or  
48 exclusions.

50 G. Service contracts covering automobiles must state  
52 whether the use of nonoriginal manufacturer's parts is  
54 allowed.

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

60 I. Service contracts must state the terms, restrictions or  
62 conditions governing cancellation of the service contract  
64 prior to the termination or expiration date of the service  
66 contract by either the provider or the service contract  
68 holder. The provider of the service contract shall mail a  
70 written notice to the service contract holder at the last  
72 known address of the service contract holder contained in  
74 the records of the provider at least 5 days prior to  
76 cancellation by the provider. Prior notice is not required  
78 if the reason for cancellation is nonpayment of the provider  
80 fee, a material misrepresentation by the service contract  
82 holder to the provider or a substantial breach of duties by  
84 the service contract holder relating to the covered product

2           or its use. The notice must state the effective date of the  
3           cancellation and the reason for the cancellation.

4           J. Service contracts must set forth the obligations and  
5           duties of the service contract holder, such as the duty to  
6           protect against any further damage and any requirement to  
7           follow instructions in an owner's manual.

8           K. Service contracts must state whether or not the service  
9           contract provides for or excludes consequential damages or  
10           preexisting conditions, if applicable.

12           **§7006. Prohibited acts**

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

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

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

36           **§7007. Record-keeping requirements**

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

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

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

42                   (1) Copies of each type of service contract sold;

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

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

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

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

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

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

30           **§7008. Cancellation of reimbursement insurance policy**

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

40           **§7009. Obligations of reimbursement insurance policy insurers**

42           1. Receipt of premiums for insurers issuing reimbursement  
44           insurance. Insurers issuing reimbursement insurance to providers  
              are deemed to have received the premiums for such insurance upon  
46           the payment of provider fees by consumers for service contracts  
              issued by such insured providers.

48           2. Other rights. This chapter does not prevent or limit  
50           the right of an insurer that issued a reimbursement insurance

2 policy to seek indemnification or subrogation against a provider  
3 if the insurer pays or is obligated to pay the service contract  
4 holder sums that the provider was obligated to pay pursuant to  
5 the provisions of the service contract.

6 **§7010. Enforcement provisions**

8 **1. Examinations.** The superintendent may conduct  
9 examinations of providers, administrators, insurers or other  
10 persons to enforce this chapter and protect service contract  
11 holders in this State. Upon request of the superintendent, the  
12 provider shall make available to the superintendent all accounts,  
13 books and records concerning service contracts sold by the  
14 provider that are necessary to enable the superintendent to  
15 reasonably determine compliance or noncompliance with this  
16 chapter.

18 **2. Enforcement.** The superintendent may take action as  
19 necessary or appropriate to enforce the provisions of this  
20 chapter and the superintendent's rules and orders adopted  
21 pursuant to this chapter and to protect service contract holders  
22 in this State.

24 **A. If a provider has violated this chapter or the**  
25 **superintendent's rules or orders, the superintendent may:**

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

30 (2) Issue an order prohibiting that provider from  
31 selling or offering for sale service contracts in  
32 violation of this chapter;

34 (3) Issue an order imposing a civil penalty on that  
35 provider; or

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

40 **B. A person aggrieved by an order issued under this section**  
41 **may request a hearing before the superintendent. The**  
42 **hearing request must be filed with the superintendent within**  
43 **20 days of the date the superintendent's order is effective.**

44 **C. If a hearing is requested, an order issued by the**  
45 **superintendent under this section must be suspended from the**  
46 **original effective date of the order until completion of the**  
47 **hearing and final decision of the superintendent.**

2           D. At the hearing, the burden is on the superintendent to  
3           show why the order issued pursuant to this section is  
4           justified. The provisions of the Maine Administrative  
5           Procedure Act apply to a hearing requested under this  
6           section.

7           3. Civil action. The superintendent may bring an action in  
8           any court of competent jurisdiction for an injunction or other  
9           appropriate relief to enjoin threatened or existing violations of  
10           this chapter or of the superintendent's rules. An action filed  
11           under this section also may seek restitution on behalf of persons  
12           aggrieved by a violation of this chapter or rules of the  
13           superintendent.

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

25           **§7011. Authority to develop rules**

26           The superintendent may adopt rules necessary to implement  
27           this chapter. Rules adopted pursuant to this section are routine  
28           technical rules as defined in Title 5, chapter 375, subchapter  
29           II-A.

30           **§7012. Effective date**

31           Service contracts entered into prior to January 1, 2002 and  
32           renewals of those contracts may but are not required to comply  
33           with this chapter. Providers and other persons are not required  
34           to comply with this chapter until January 1, 2002. A provider or  
35           other person may but is not required to implement the  
36           requirements of this chapter prior to January 1, 2002. The  
37           failure of a provider or other person to comply with this chapter  
38           or otherwise to administer a service contract in the manner  
39           required by this chapter prior to January 1, 2002 is not  
40           admissible in any court, arbitration or alternative dispute  
41           resolution proceedings and that failure may not be otherwise used  
42           to prove that the action of any person or the service contract  
43           was unlawful or otherwise improper.

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## SUMMARY

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

8

1. Warranties;

10

2. Maintenance agreements;

12

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

16

4. Service contracts sold or offered for sale to persons  
other than consumers; and

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20           5. Service contracts on tangible property purchased for  
          \$350 or less.