

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1621

H.P. 1149

House of Representatives, December 23, 2009

An Act To Increase Consumer Choice Regarding Service Contracts

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative THIBODEAU of Winterport.
Cosponsored by Senator SHERMAN of Aroostook and
Representatives: BUTTERFIELD of Bangor, CAREY of Lewiston, CURTIS of Madison,
JOHNSON of Greenville, SYKES of Harrison, THOMAS of Ripley, Senators: COURTNEY
of York, JACKSON of Aroostook.

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

2 Sec. 1. 24-A MRSA c. 89 is enacted to read:

3 CHAPTER 89

4 SERVICE CONTRACTS

5 §7001. Scope and purpose

6 1. Purpose. The purpose of this chapter is to create a legal framework within which
7 service contracts may be sold in this State.

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

10 A. Warranties:

11 B. Maintenance agreements;

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

15 D. Service contracts sold or offered for sale to persons other than consumers.

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

20 §7002. Definitions

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

23 1. Administrator. "Administrator" means the person who is responsible for the
24 administration of a service contract or who is responsible for a filing required by this
25 chapter.

26 2. Consumer. "Consumer" means a natural person who buys other than for purposes
27 of resale any tangible personal property that is distributed in commerce and that is
28 normally used for personal, family or household purposes and not for business or research
29 purposes.

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

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

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

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

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

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

9 **9. Reimbursement insurance policy.** "Reimbursement insurance policy" means a
10 policy of insurance that is issued to a provider to reimburse the provider or to pay on
11 behalf of the provider all covered contractual obligations incurred by the provider under
12 the terms of the insured service contracts issued or sold by the provider.

13 **10. Service contract.** "Service contract" means a contract or agreement provided in
14 exchange for a separately stated consideration for a specific duration to perform the
15 repair, replacement or maintenance of property or provide indemnification for repair,
16 replacement or maintenance for an operational or structural failure due to a defect in
17 materials or workmanship or normal wear and tear, with or without additional provision
18 for incidental payment or indemnity under limited circumstances, including, but not
19 limited to, towing, rental and emergency road service. Service contracts may provide for
20 the repair, replacement or maintenance of property for damage resulting from power
21 surges and accidental damage from handling.

22 **11. Service contract holder or contract holder.** "Service contract holder" or
23 "contract holder" means a person who is the purchaser or holder of a service contract.

24 **12. Warranty.** "Warranty" means a warranty made solely by the manufacturer,
25 importer or seller of property or services without consideration that is not negotiated or
26 separated from the sale of the product and is incidental to the sale of the product and that
27 guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or
28 other remedial measures, such as repair or replacement of the property or repetition of
29 services.

30 **§7003. Requirements for doing business**

31 **1. Administrator.** A provider may, but is not required to, appoint an administrator
32 or other designee to be responsible for the administration of service contracts and
33 compliance with this chapter.

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

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

38 **B.** Provided a copy of the service contract to the service contract holder within a
39 reasonable period of time from the date of purchase.

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

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

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

8 B. Undertake to:

9 (1) Maintain a funded reserve account for its obligations under its service
10 contracts issued and outstanding in this State. The reserves may not be less than
11 40% of the gross consideration received, less claims paid, on the sale of the
12 service contract for all contracts in force. The reserve account is subject to
13 examination and review by the superintendent; and

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

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

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

21 (c) Cash;

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

23 (e) Another form of security prescribed by rules adopted by the
24 superintendent; or

25 C. Undertake to:

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

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

38 5. Right to void. A service contract must require the provider to permit the service
39 contract holder to return the service contract within 20 days of the date the service
40 contract is mailed to the service contract holder or within 10 days of delivery if the

1 service contract is delivered to the service contract holder at the time of sale or within a
2 longer time period permitted under the service contract. Upon return of the service
3 contract to the provider within the applicable time period, if no claim has been made
4 under the service contract prior to its return to the provider, the service contract is void
5 and the provider shall refund to the service contract holder, or credit the account of the
6 service contract holder, the full purchase price of the service contract. The right to void
7 the service contract provided in this subsection is not transferable and applies only to the
8 original service contract purchaser and only if no claim has been made prior to its return
9 to the provider. A 10% penalty per month must be added to a refund that is not paid or
10 credited within 45 days after return of the service contract to the provider.

11 **6. Premium taxes.** Provider fees collected on service contracts are not subject to
12 premium taxes. Premiums for reimbursement insurance policies are subject to applicable
13 taxes.

14 **7. Licensing exemptions.** Except for the registration requirement in subsection 3,
15 providers and related service contract sellers, administrators and other persons marketing,
16 selling or offering for sale service contracts are exempt from any licensing requirements
17 of this State.

18 **§7004. Required provisions; reimbursement insurance policy**

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

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

29 **§7005. Required disclosures; service contracts**

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

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

39 **B.** A service contract not issued under a reimbursement insurance policy pursuant to
40 section 7003, subsection 4, paragraph A must contain a statement in substantially the

1 following form: "Obligations of the provider under this service contract are backed
2 by the full faith and credit of the provider."

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

9 D. A service contract must state the purchase price of the service contract and the
10 terms under which the service contract is sold. The purchase price is not required to
11 be preprinted on the service contract and may be negotiated at the time of sale with
12 the service contract holder.

13 E. A service contract must state the existence of any deductible amount, if
14 applicable.

15 F. A service contract must specify the merchandise and services to be provided and
16 any limitations, exceptions or exclusions.

17 G. A service contract covering automobiles must state whether the use of nonoriginal
18 manufacturer's parts is allowed.

19 H. A service contract must state any restrictions governing the transferability of the
20 service contract, if applicable.

21 I. A service contract must state the terms, restrictions and conditions governing
22 cancellation of the service contract prior to the termination or expiration date of the
23 service contract by either the provider or the service contract holder. The provider of
24 the service contract shall mail a written notice to the service contract holder at the last
25 known address of the service contract holder contained in the records of the provider
26 at least 5 days prior to cancellation by the provider. Prior notice is not required if the
27 reason for cancellation is nonpayment of the provider fee, a material
28 misrepresentation by the service contract holder to the provider or a substantial
29 breach of contractual duties by the service contract holder relating to the covered
30 product or its use. The notice must state the effective date of the cancellation and the
31 reason for the cancellation.

32 J. A service contract must set forth the obligations and duties of the service contract
33 holder, such as the duty to protect against any further damage and any requirement to
34 follow instructions in an owner's manual.

35 K. A service contract must state whether or not the service contract provides for or
36 excludes consequential damages or preexisting conditions, if applicable.

37 **§7006. Prohibited acts**

38 1. Prohibited names. A provider may not use in its name the words "insurance,"
39 "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or
40 surety business and may not use a name deceptively similar to the name or description of
41 any insurance or surety corporation or to the name of any other provider. The word
42 "guaranty" or similar word may be used by a provider. This section does not apply to a

1 company that was using any of the prohibited language in its name prior to the effective
2 date of this chapter; however, a company using the prohibited language in its name shall
3 include in its service contracts a statement in substantially the following form: "This
4 agreement is not an insurance contract."

5 2. Misleading statements. A provider or its representative may not in its service
6 contracts or literature make, permit or cause to be made any false or misleading statement
7 or deliberately omit any material statement the omission of which would be considered
8 misleading.

9 3. Prohibited conditions of sale. A person, including but not limited to a bank,
10 savings and loan association, lending institution, manufacturer or seller of any product,
11 may not require the purchase of a service contract as a condition of a loan or a condition
12 for the sale of any property.

13 §7007. Record-keeping requirements

14 1. Books and records. A provider shall keep books and records in accordance with
15 this section.

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

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

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

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

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

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

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

29 D. The records required under this chapter may be, but are not required to be,
30 maintained in an electronic format or other record-keeping medium. If the records
31 are maintained in other than hard copy, the records must be capable of being
32 transferred to legible hard copy at the request of the superintendent.

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

36 §7008. Cancellation of reimbursement insurance policy

37 An insurer that issues a reimbursement insurance policy may not terminate the policy
38 until a notice of cancellation has been mailed or delivered to the superintendent. This

1 notice of cancellation must be mailed or delivered to the superintendent at least 5 days
2 prior to cancellation. The cancellation of a reimbursement insurance policy does not
3 reduce the insurer's responsibility for service contracts issued by providers prior to the
4 date of the cancellation.

5 **§7009. Obligations of reimbursement insurance policy insurers**

6 1. Agency. A provider is considered the agent of the insurer that issued the
7 reimbursement insurance policy for purposes of obligating the insurer to service contract
8 holders in accordance with the service contract and this chapter. When a provider is
9 acting as an administrator and enlists other providers, the provider acting as the
10 administrator shall notify the insurer of the existence and identities of the other providers.

11 2. Other rights. This chapter does not negate or limit the right of an insurer that
12 issued a reimbursement insurance policy to seek indemnification or subrogation against a
13 provider if the insurer pays or is obligated to pay the service contract holder sums that the
14 provider was obligated to pay pursuant to the provisions of the service contract.

15 **§7010. Enforcement provisions**

16 1. Examinations. The superintendent may conduct examinations of providers,
17 administrators, insurers or other persons to enforce this chapter and protect service
18 contract holders in this State. Upon request of the superintendent, a provider shall make
19 available to the superintendent all accounts, books and records concerning service
20 contracts sold by the provider that are necessary to enable the superintendent to
21 reasonably determine compliance or noncompliance with this chapter.

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

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

- 27 (1) Issue an order directed to that provider to cease and desist from committing
28 violations of this chapter or the superintendent's rules or orders;
29 (2) Issue an order prohibiting that provider from selling or offering for sale
30 service contracts in violation of this chapter;
31 (3) Issue an order imposing a civil penalty on that provider; or
32 (4) Issue any combination of orders, as applicable.

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

36 C. If a hearing is requested pursuant to paragraph B, an order issued by the
37 superintendent under this section must be suspended from the original effective date
38 of the order until completion of the hearing and final decision of the superintendent.

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

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

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

17 **§7011. Authority to adopt rules**

18 The superintendent may adopt rules necessary to implement this chapter. Rules
19 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
20 375, subchapter 2-A.

21 **§7012. Application**

22 Service contracts entered into prior to January 1, 2011 and renewals of those
23 contracts may, but are not required to, comply with this chapter. Providers and other
24 persons are not required to comply with this chapter until January 1, 2011. A provider or
25 other person may, but is not required to, implement the requirements of this chapter prior
26 to January 1, 2011. The failure of a provider or other person to comply with this chapter
27 or otherwise to administer a service contract in the manner required by this chapter prior
28 to January 1, 2011 is not admissible in any court, arbitration or alternative dispute
29 resolution proceedings and that failure may not be otherwise used to prove that the action
30 of any person or the service contract was unlawful or otherwise improper.

31 **SUMMARY**

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

- 35 1. Warranties;
36 2. Maintenance agreements;

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

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