

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1507

H.P. 1109

House of Representatives, April 26, 2011

An Act Regarding Service Contracts

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative CUSHING of Hampden.
Cosponsored by Senator PLOWMAN of Penobscot and
Representatives: CURTIS of Madison, FITTS of Pittsfield, KNIGHT of Livermore Falls,
McCLELLAN of Raymond, MORISSETTE of Winslow, RICHARDSON of Warren.

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

2 **Sec. 1. 10 MRSA c. 213-A** is enacted to read:

3 **CHAPTER 213-A**

4 **SERVICE CONTRACTS**

5 **§1408. Short title; scope**

6 **1. Short title.** This chapter may be known and cited as "the Service Contracts Act."

7 **2. Exclusions.** This chapter does not apply to:

8 A. Warranties;

9 B. Maintenance agreements;

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

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

14 E. Service contracts on tangible personal property when the tangible personal
15 property for which the service contract is sold has a purchase price of \$100 or less,
16 exclusive of sales tax.

17 **3. Limited exclusions.** The application of this chapter to the following is limited as
18 follows.

19 A. Service contracts under which a motor vehicle dealer licensed pursuant to Title
20 29-A, chapter 9 is obligated to perform and that are sold in connection with the sale
21 or service of a motor vehicle as defined in Title 29-A, section 101, subsection 42 are
22 exempt from the requirements of section 1408-B, subsection 5 but must comply with
23 all other requirements of this chapter.

24 B. A motor vehicle manufacturer's service contracts on the motor vehicle
25 manufacturer's products must comply only with section 1408-B, subsection 7; section
26 1409-A, subsections 1 and 4 to 12; section 1409-B; and section 1409-F, as applicable.

27 C. The types of agreements referred to in subsection 2 and in paragraph A and
28 service contracts governed by this chapter are not insurance and are not required to
29 comply with any provision of the insurance laws of this State.

30 **§1408-A. Definitions**

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

33 **1. Administrator.** "Administrator" means the person who is responsible for the
34 administration of a service contract or the service contracts plan or who is responsible for
35 any submission required by this chapter.

1 **2. Consumer.** "Consumer" means an individual who buys other than for purposes of
2 resale any tangible personal property that is distributed in commerce and that is normally
3 used for personal, family or household purposes and not for business or research
4 purposes.

5 **3. Maintenance agreement.** "Maintenance agreement" means a contract of limited
6 duration that provides for scheduled maintenance only and does not include repair or
7 replacement.

8 **4. Motor vehicle manufacturer.** "Motor vehicle manufacturer" means a person
9 that:

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

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

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

16 D. Sells motor vehicles under the trade name or label of another person that
17 manufactures or produces motor vehicles; or

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

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

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

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

27 **8. Reimbursement insurance policy.** "Reimbursement insurance policy" means a
28 policy of insurance issued to a provider to either provide reimbursement to the provider
29 under the terms of the insured service contracts issued or sold by the provider or, in the
30 event of the provider's nonperformance, to pay on behalf of the provider all covered
31 contractual obligations incurred by the provider under the terms of the insured service
32 contracts issued or sold by the provider.

33 **9. Service contract.** "Service contract" means a contract or agreement for a
34 separately stated consideration for a specific duration to perform the repair, replacement
35 or maintenance of property or to indemnify for the repair, replacement or maintenance for
36 the operational or structural failure of any motor vehicle, residential or other property due
37 to a defect in materials or workmanship, accidental damage from handling or normal
38 wear and tear, with or without additional provisions for incidental payment of indemnity
39 under limited circumstances, including, but not limited to, towing, rental and emergency
40 road service and road hazard protection. Service contracts may provide for the repair.

1 replacement or maintenance of property for damage resulting from power surges or
2 interruption. "Service contract" also includes a contract or agreement sold for a
3 separately stated consideration for a specific duration that provides for any of the
4 following:

5 A. The repair or replacement or indemnification for the repair or replacement of a
6 motor vehicle for the operational or structural failure of one or more parts or systems
7 of the motor vehicle brought about by the failure of an additive product to perform as
8 represented;

9 B. The repair or replacement of tires or wheels on a motor vehicle damaged as a
10 result of coming into contact with road hazards, including, but not limited to,
11 potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps;

12 C. The removal of dents, dings or creases on a motor vehicle that can be repaired
13 using the process of paintless dent removal without affecting the existing paint finish
14 and without replacing vehicle body panels, sanding, bonding or painting;

15 D. The repair of small motor vehicle windshield chips or cracks but not the
16 replacement of the entire windshield; or

17 E. The repair of damage to the interior components of a motor vehicle caused by
18 wear and tear but that expressly excludes the replacement of any part or component
19 of a motor vehicle's interior.

20 Notwithstanding any other provision of law, service contracts are not insurance in this
21 State and may not be regulated as insurance.

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

24 **11. Superintendent.** "Superintendent" means the Superintendent of Insurance.

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

31 **§1408-B. Requirements for doing business**

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

35 **2. Provision of receipt and copy of contract.** A service contract may not be issued
36 or sold in this State unless the provider:

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

1 B. Provides a copy of the service contract to the service contract holder within a
2 reasonable period of time from the date of purchase.

3 **3. Sample copy before sale.** A provider shall provide a consumer with a complete
4 sample copy of the service contract terms and conditions prior to the time of sale upon
5 request by the consumer. A provider may comply with this provision by providing the
6 consumer with a complete sample copy of the terms and conditions or by directing the
7 consumer to a website containing a complete sample of the terms and conditions of the
8 service contract.

9 **4. Registration.** A provider of service contracts sold in this State shall register with
10 the superintendent providing the provider's name, full business address, telephone number
11 and contact person and designating a person in this State for service of process. The
12 provider shall pay to the superintendent a fee of \$200 upon initial registration and every
13 year thereafter. The registration must be updated by written notification to the
14 superintendent if material changes occur in the registration on file.

15 **5. Provider's obligations.** To ensure the performance of the provider's obligations
16 to its service contract holders, a provider shall comply with one of the following
17 requirements:

18 A. The provider shall insure all service contracts under a reimbursement insurance
19 policy filed with the superintendent and issued by an insurer licensed, registered or
20 otherwise authorized to do business in this State that provides for either of the
21 following:

22 (1) At the time the policy is filed with the superintendent and continuously
23 thereafter:

24 (a) The insurer maintains surplus as to policyholders and paid-in capital of at
25 least \$15,000,000; and

26 (b) The insurer files annually copies of the insurer's audited financial
27 statements, its annual statement under Title 24-A, section 423 and the
28 actuarial certification required by and filed in the insurer's state of domicile;
29 or

30 (2) At the time the policy is filed with the superintendent and continuously
31 thereafter:

32 (a) The insurer maintains surplus as to policyholders and paid-in capital of
33 less than \$15,000,000 but at least \$10,000,000;

34 (b) The insurer demonstrates to the satisfaction of the superintendent that the
35 insurer maintains a ratio of net written premiums, wherever written, to
36 surplus as to policyholders and paid-in capital of not greater than 3 to 1; and

37 (c) The insurer files annually copies of the insurer's audited financial
38 statements, its annual statement under Title 24-A, section 423 and the
39 actuarial certification required by and filed in the insurer's state of domicile;

40 B. The provider shall maintain a funded reserve account for its obligations under its
41 contracts issued and outstanding in this State. The reserves may not be less than 40%

1 of gross consideration received, less claims paid, on the sale of service contracts for
2 all in-force contracts. The reserve account must be subject to examination and
3 review by the superintendent. The provider shall place in trust with the
4 superintendent a financial security deposit, having a value of not less than 5% of the
5 gross consideration received, less claims paid, on the sale of service contracts for all
6 service contracts issued and in force, but not less than \$25,000, consisting of one of
7 the following:

8 (1) A surety bond issued by an authorized surety;

9 (2) Securities of the type eligible for deposit by authorized insurers in this State;

10 (3) Cash;

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

12 (5) Another form of security prescribed by rules adopted by the superintendent;
13 or

14 C. The provider shall maintain, or together with its parent company maintain, a net
15 worth or stockholders' equity of \$100,000,000 and upon request provide the
16 superintendent with a copy of the provider's or the provider's parent company's most
17 recent Form 10-K or Form 20-F annual report filed with the United States Securities
18 and Exchange Commission within the last calendar year or, if the company does not
19 file with the United States Securities and Exchange Commission, a copy of the
20 company's audited financial statements that shows a net worth of the provider or its
21 parent company of at least \$100,000,000. If the provider's parent company's Form
22 10-K or Form 20-F annual report or financial statements are filed to meet the
23 provider's financial stability requirement, the parent company shall agree to guarantee
24 the obligations of the provider relating to service contracts sold by the provider in this
25 State.

26 **6. Other financial security requirements.** Except for the requirements specified in
27 subsections 4 and 5, other financial security requirements may not be required by the
28 superintendent for providers.

29 **7. Return of service contract.** A service contract must require the provider to
30 permit the service contract holder to return the service contract subject to the following
31 conditions.

32 A. A service contract holder may return a service contract within 20 days of the date
33 the service contract was mailed to the service contract holder or within 10 days of
34 delivery if the service contract is delivered to the service contract holder at the time
35 of sale or within a longer time period permitted under the service contract. Upon
36 return of the service contract to the provider within the applicable time period, if no
37 claim has been made under the service contract prior to its return to the provider, the
38 service contract is void and the provider shall refund to the service contract holder or
39 credit the account of the service contract holder the full purchase price of the service
40 contract and any sales tax refund required pursuant to state law. The right to void the
41 service contract provided in this subsection is not transferable and applies only to the
42 original service contract purchaser and only if no claim has been made prior to its

1 return to the provider. A 10% penalty per month must be added to a refund that is not
2 paid or credited within 45 days after return of the service contract to the provider.

3 B. After the time period specified in paragraph A for returning a service contract or
4 if a claim has been made under the service contract within that time period, a service
5 contract holder may cancel the service contract and the provider shall refund to the
6 service contract holder 100% of the unearned pro rata provider fee, less any claims
7 paid. A reasonable administrative fee may be charged by the provider not to exceed
8 10% of the gross provider fee paid by the service contract holder.

9 **8. Premium taxes.** Insurance premium taxes under Title 36, chapter 357 apply as
10 follows.

11 A. Provider fees collected on service contracts are not subject to premium taxes.

12 B. Premiums for reimbursement insurance policies are subject to premium taxes.

13 **9. Licensing exemption.** Except for the registration requirements in subsection 4,
14 providers and related service contract sellers, administrators and other persons marketing,
15 selling or offering to sell service contracts are exempt from any licensing requirements of
16 this State related to such activity.

17 **10. Insurance laws exemption.** The marketing, sale, offering for sale, issuance,
18 making, proposing to make and administration of service contracts by providers and
19 related service contract sellers, administrators and other persons are exempt from all
20 provisions of the State's insurance laws.

21 **§1409. Required disclosures; reimbursement insurance policy**

22 **1. Policy statement.** Reimbursement insurance policies insuring service contracts
23 issued, sold or offered for sale in this State must state that the insurer that issued the
24 reimbursement insurance policy shall either reimburse or pay on behalf of the provider
25 any covered sums the provider is legally obligated to pay or, in the event of the provider's
26 nonperformance, shall provide the service that the provider is legally obligated to perform
27 according to the provider's contractual obligations under the service contracts issued or
28 sold by the provider.

29 **2. Application to insurer.** If covered service is not provided by a provider within
30 60 days of proof of loss by a service contract holder, the service contract holder may
31 apply directly to the reimbursement insurance company for reimbursement or
32 performance.

33 **§1409-A. Required disclosure; service contracts**

34 **1. Form; language.** A service contract marketed, sold, offered for sale, issued,
35 made, proposed to be made or administered in this State must be written, printed or typed
36 in clear, understandable language that is in a font size that is easily readable by a person
37 with average eyesight and must disclose the requirements set forth in this section, as
38 applicable.

1 **2. Notice of reimbursement insurance policy.** A service contract insured under a
2 reimbursement insurance policy pursuant to section 1408-B must contain a statement in
3 substantially the following form: "Obligations of the provider under this service contract
4 are insured under a service contract reimbursement insurance policy." The service
5 contract must also state the name and address of the insurer.

6 **3. Notice when no reimbursement insurance policy.** A service contract not
7 insured under a reimbursement insurance policy pursuant to section 1408-B must contain
8 a statement in substantially the following form: "Obligations of the provider under this
9 service contract are backed by the full faith and credit of the provider."

10 **4. Contact information.** A service contract must state the name and address of the
11 provider, the service contract seller and the service contract holder to the extent that the
12 name and address of the service contract holder has been furnished by the service contract
13 holder. A service contract must identify any administrator if different from the provider.
14 The identities of these parties are not required to be preprinted on the service contract and
15 may be added to the service contract at the time of sale.

16 **5. Purchase price and terms.** A service contract must state the total purchase price
17 and the terms under which the service contract is sold. The purchase price is not required
18 to be preprinted on the service contract and may be negotiated at the time of sale with the
19 service contract holder.

20 **6. Deductible amount.** A service contract must state the existence of any deductible
21 amount, if applicable.

22 **7. Merchandise and services to be provided.** A service contract must specify the
23 merchandise and services to be provided and any limitations, exceptions or exclusions.

24 **8. Nonoriginal manufacturers' parts.** A service contract covering a motor vehicle
25 must state whether the use of nonoriginal manufacturers' parts is allowed.

26 **9. Transferability.** A service contract must state any restrictions governing the
27 transferability of the service contract, if applicable.

28 **10. Cancellation.** A service contract must state the terms, restrictions or conditions
29 governing cancellation of the service contract prior to the termination or expiration date
30 of the service contract by either the provider or the service contract holder. The provider
31 of the service contract shall mail a written notice to the service contract holder at the last
32 known address of the service contract holder contained in the records of the provider at
33 least 5 days prior to cancellation by the provider. Prior notice is not required if the reason
34 for cancellation is nonpayment of the provider fee, a material misrepresentation by the
35 service contract holder to the provider or a substantial breach of duties by the service
36 contract holder relating to the covered product or its use. The notice must state the
37 effective date of the cancellation and the reason for the cancellation. If a service contract
38 is cancelled by the provider for a reason other than nonpayment of the provider fee, the
39 provider shall refund to the service contract holder 100% of the unearned pro rata
40 provider fee, less any claims paid. A reasonable administrative fee may be charged by

1 the provider not to exceed 10% of the gross provider fee paid by the service contract
2 holder.

3 **11. Obligations and duties.** A service contract must set forth all of the obligations
4 and duties of the service contract holder, such as the duty to protect against any further
5 damage and any requirement to follow the owner's manual.

6 **12. Consequential damages.** A service contract must state whether the service
7 contract provides for or excludes consequential damages or preexisting conditions, if
8 applicable. A service contract may, but is not required to, cover damage resulting from
9 rust, corrosion or damage caused by a noncovered part or system.

10 **§1409-B. Prohibited acts**

11 **1. Name of provider.** A provider may not use in its name the words "insurance,"
12 "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or
13 surety business or a name deceptively similar to the name or description of any insurance
14 or surety corporation or to the name of any other provider. The word "guaranty" or a
15 similar word may be used by a provider. This section does not apply to a provider that
16 was using any of the prohibited language in its name prior to January 1, 2012. A provider
17 using the prohibited language in its name shall include in its service contracts a statement
18 in substantially the following form: "This agreement is not an insurance contract."

19 **2. False or misleading statements; omissions.** A provider or its representative may
20 not in its service contracts or literature make, permit or cause to be made any false or
21 misleading statement or deliberately omit any material statement, the omission of which
22 would be considered misleading.

23 **3. Condition of loan or sale.** A person, including but not limited to a bank, savings
24 and loan association, lending institution, manufacturer or seller of any product may not
25 require the purchase of a service contract as a condition of a loan or a condition for the
26 sale of any property.

27 **4. Motor vehicle service contracts.** A motor vehicle service contract provider or its
28 representative may not, directly or indirectly, represent in any manner, whether by written
29 solicitation or telemarketing, a false, deceptive or misleading statement with respect to:

30 A. The provider's affiliation with a motor vehicle manufacturer;

31 B. The provider's possession of information regarding a motor vehicle owner's
32 current motor vehicle manufacturer's original equipment warranty;

33 C. The expiration of a motor vehicle owner's current motor vehicle manufacturer's
34 original equipment warranty; or

35 D. A requirement that a motor vehicle owner register for a new motor vehicle service
36 contract with the provider in order to maintain coverage under the motor vehicle
37 owner's current motor vehicle service contract or manufacturer's original equipment
38 warranty.

1 **§1409-C. Record-keeping requirements**

2 **1. Provider records.** A provider shall keep accurate accounts, books and records
3 concerning transactions regulated under this chapter. The provider's accounts, books and
4 records must include the following:

5 A. Copies of each type of service contract sold;

6 B. The name and address of each service contract holder to the extent that the name
7 and address have been furnished by the service contract holder;

8 C. A list of the locations where service contracts are marketed, sold or offered for
9 sale by the provider; and

10 D. Written claims files, which must contain at least the dates and descriptions of
11 claims related to service contracts.

12 **2. Retention period.** Except as provided in subsection 4, a provider shall retain all
13 records required to be maintained by this section for at least one year after the specified
14 period of coverage has expired.

15 **3. Form of records.** The records required under this chapter may be, but are not
16 required to be, maintained on a computer disk or other record-keeping technology. If the
17 records are maintained in other than hard copy, the records must be capable of
18 duplication to legible hard copy at the request of the superintendent.

19 **4. Discontinuation of business.** A provider discontinuing business in this State
20 shall maintain its records until it furnishes to the superintendent satisfactory proof that it
21 has discharged all obligations to service contract holders in this State.

22 **§1409-D. Cancellation of reimbursement insurance policy**

23 An insurer that issued a reimbursement insurance policy may not terminate the policy
24 until a notice of termination has been mailed or delivered to the superintendent. The
25 termination of a reimbursement insurance policy does not reduce the insurer's
26 responsibility for service contracts issued by providers prior to the date of the
27 termination.

28 **§1409-E. Obligation of reimbursement insurance policy insurers**

29 **1. Receipt of premium.** An insurer issuing a reimbursement insurance policy to a
30 provider is deemed to have received the premiums for such insurance upon the payment
31 of provider fees by consumers for service contracts issued by the insured provider.

32 **2. Indemnification or subrogation.** This chapter does not prevent or limit the right
33 of an insurer that issued a reimbursement insurance policy to seek indemnification or
34 subrogation against a provider if the insurer pays or is obligated to pay the service
35 contract holder sums that the provider was obligated to pay pursuant to the provisions of
36 the service contract.

1 **§1409-F. Enforcement provisions**

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

8 **2. Enforcement actions.** The superintendent may take actions necessary or
9 appropriate to enforce the provisions of this chapter and the superintendent's rules and
10 orders and to protect service contract holders.

11 A. If a provider has violated this chapter or a rule or order of the superintendent, the
12 superintendent may issue an order directed to that provider to cease and desist from
13 committing violations of this chapter or the superintendent's rules or orders, may
14 issue an order prohibiting a service contract provider from selling or offering for sale
15 service contracts in violation of this chapter or may issue an order imposing a civil
16 penalty on that provider as provided in paragraph C, or any combination thereof, as
17 applicable.

18 (1) A person aggrieved by an order issued under this paragraph may request a
19 hearing before the superintendent. The hearing request must be filed with the
20 superintendent within 20 days of the date the superintendent's order is effective.

21 (2) If a hearing is requested by a provider, an order issued by the superintendent
22 under this paragraph must be suspended from the original effective date of the
23 order until completion of the hearing and final decision of the superintendent.

24 (3) At the hearing, the burden is on the superintendent to show why an order
25 issued pursuant to this paragraph is justified. The provisions of Title 24-A,
26 sections 229 to 236 apply to a hearing requested under this paragraph.

27 B. The superintendent may bring an action in any court of competent jurisdiction for
28 an injunction or other appropriate relief to enjoin a threatened or existing violation of
29 this chapter or of an order or rule of the superintendent. An action filed under this
30 paragraph may also seek restitution on behalf of persons aggrieved by a violation of
31 this chapter or of an order or rule of the superintendent.

32 C. A person who is found to have violated this chapter or an order or rule of the
33 superintendent may be assessed by the superintendent a civil penalty under Title
34 24-A, section 12-A, subsection 1 in an amount determined by the superintendent of
35 not more than \$500 per violation and not more than \$10,000 in the aggregate for all
36 violations of a similar nature. For purposes of this section, violations are of a similar
37 nature if the violations consist of the same or similar course of conduct, action or
38 practice, irrespective of the number of times the act, conduct or practice that is
39 determined to be a violation of this chapter or of an order or rule of the
40 superintendent occurred.

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§1410. Transition

A person engaged in the service contract business, as a provider or otherwise, in this State on or before January 1, 2012 that submits an application for registration as a provider pursuant to this chapter within 30 days after the superintendent makes the application available may continue to engage in business as a provider in this State until final agency action is taken by the superintendent regarding the registration application and all rights to judicial review have been exhausted or expired.

Sec. 2. Effective date. This Act takes effect January 1, 2012.

SUMMARY

This bill creates a statutory framework within which service contracts are defined and regulated by the Superintendent of Insurance. It provides that service contracts are not insurance and are not subject to the insurance laws. It includes consumer protections and eliminates unnecessary administration.