

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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Legislative Document

No. 1517

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H. P. 1112

House of Representatives, March 16, 1971

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Evans of Freedom.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT Establishing a Home Improvement Bonding Act.**

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

**Sec. 1. R. S., T. 9, § 3752, sub-§ 1, amended.** Subsection 1 of section 3752 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

1. **Administrative procedures.** Advise and consult with the commissioner concerning practices in the home repair industry, the administration of both this chapter and chapter 361, and the rules and regulations adopted to implement ~~this chapter~~ both these chapters;

**Sec. 2. R. S., T. 9, Part 9, c. 361, additional.** Part 9 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965 and as amended, is further amended by adding a new chapter 361 to read as follows:

CHAPTER 361

THE HOME IMPROVEMENT BONDING ACT

§ 3780. Short title

This chapter may be cited as "The Home Improvement Bonding Act."

§ 3781. Definitions

In this chapter, unless the context otherwise indicates:

1. **Commissioner.** "Commissioner" means the Bank Commissioner of the State of Maine and includes those members of his department designated by him to administer and enforce this chapter.

2. **Contractor.** "Contractor" means any person, other than a bona fide employee of the owner, who undertakes or offers to undertake or agrees to perform any home improvement, whether or not such person is a prime contractor or subcontractor with respect to the owner.

3. **Home improvement.** "Home improvement" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement or addition to any land or building, or that portion thereof which is used or designed to be used as a residence or dwelling place; and shall include the construction, replacement or improvement of driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters and other improvements to structures or upon land which is adjacent to a dwelling house. "Home improvement" shall not include the construction of a new home building or work done by a contractor in compliance with a guarantee of completion of a new building project, or the sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials. Without regard to the extent of affixation, "home improvement" includes the installation of central heating or air-conditioning systems, storm windows, awnings, or fire alarms.

4. **Home improvement contract.** "Home Improvement Contract" means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner for the performance of a home improvement, and includes all labor, services and materials to be furnished and performed thereunder.

5. **Owner.** "Owner" means a person who buys goods or services pursuant to a home improvement contract or one who succeeds to the rights or assumes the obligations of such person.

6. **Person.** "Person" means an individual, partnership, corporation, trust, association, owner, contractor, salesman or any other legal entity.

#### § 3782. Purpose

Any contractor who enters into a home improvement contract for home improvement within this State shall file a performance bond with the commissioner before work may be initiated under the terms of the home improvement contract, equal to the full home improvement contract amount conditioned upon the faithful performance of the home improvement contract in accordance with the plans, specifications and conditions thereof. This bond shall be solely for the protection of the owner.

#### § 3783. Release of the performance bond

The performance bond shall be in a form to be prescribed by the commissioner and acceptable to him to safeguard the interests of the owner. The commissioner shall establish and implement rules, regulations and requirements for the release of such performance bonds including, but not limited to, a requirement that the contractor tender sufficient proof to the commissioner that he has paid for all materials used in the home improvement contract under the bond as well as whatever rules, regulations and requirements are necessary to carry out the purposes of this chapter.

**§ 3785. Exceptions**

This chapter shall not apply to:

1. **Certain professions.** Licensed electricians, architects, plumbers or any other such person who is required by state or local law to attain standards of competency or experience as a prerequisite to engaging in such craft or profession and who is acting exclusively within the scope of the craft or profession for which he is currently licensed pursuant to such other law.

2. **Amount.** Home improvement contracts where the gross amount to be paid by the owner is less than \$200 unless such contract was part of a series of contracts entered into in order to avoid the intent of this chapter.

**§ 3786. Violations**

Any contractor and any officer, partner, member, employee, agent or representative of any such contractor who shall knowingly violate this chapter or shall directly or indirectly counsel, aid or abet such violation shall be punished by a fine of not more than \$2,500 for each offense or by imprisonment for not more than 90 days, or by both.

Any person who secures or attempts to secure the release of any such performance bond through the use of any fraudulent or deceptive act or practice shall be punished by a fine of not more than \$3,000 for each offense or by imprisonment for not more than 120 days, or by both.

**STATEMENT OF FACT**

Under this new chapter and amendment the homeowner will be afforded some security that the home improvements for which he has contracted will be completed to his satisfaction and that he will not have his home attached after paying the contractor because the contractor failed to pay for the materials used under the contract.