

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
107TH LEGISLATURE

COMMITTEE AMENDMENT " A" to H.P. 575, L.D. 710, Bill,  
"AN ACT to Establish Minimum Warranty Standards for New  
Residential Dwellings."

Amend said Bill by striking out everything after the  
enacting clause and inserting in place thereof the following:

'10 MRSA c. 214 is enacted to read:

CHAPTER 214

MINIMUM WARRANTY STANDARDS FOR NEW

RESIDENTIAL DWELLINGS

§1421. Necessity of warranty

All new residential dwellings shall be covered by the  
warranty set forth in this chapter.

§1422. Definitions

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

I. Builder. "Builder" means any individual, firm,  
association or corporation which builds, constructs, develops  
or offers for sale new residential dwellings as defined in

this chapter. Any individual, firm, association, partnership or corporation which purchases a new residential dwelling from a builder for the purpose of resale to a purchaser shall be deemed a builder under this chapter and shall give the same warranty as required of a builder. This definition shall not include licensed real estate brokers who sell new residential dwellings for a 3rd party.

2. New residential dwelling. "New residential dwelling" means a structure, other than industrialized housing or mobile homes as defined in Title 30, section 4773, designed for residential occupancy which is offered for sale and which has not been occupied as a residence prior to such offer or sale. The term includes condominium dwellings and apartment houses designed for rental use or sale as cooperative units or otherwise.

3. Purchaser. "Purchaser" means an individual or individuals who purchase a new residential dwelling for the purpose of occupancy by themselves or their tenants or lessees, and not for the purpose of resale.

4. Subsurface sewage disposal system. "Subsurface sewage disposal system" shall mean any system for disposing of wastes or waste waters on or beneath the surface of the earth including, but not limited to, holding ponds, surface spray

systems, septic tanks, drainage fields, cesspools, wells, holding tanks, surface ditches or any other fixture, mechanism or apparatus used for such purposes, but shall not include any discharge system licensed under Title 38, section 414, or any municipal or quasi-municipal sewer system.

§1423. Application

The warranty provided for in this chapter shall extend for a period of 12 months from the date of sale to a purchaser and shall apply to a builder and to the manufacturer of any component structure, subsurface sewage disposal system, appliance or mechanical hookup or system installed and affixed to the dwelling by the builder.

§1424. Written warranty; contents

The warranty to the purchaser from the builder, or from the manufacturer as specified in section 1423, shall be set forth in writing and shall be delivered to the purchaser at the time of purchase and shall contain the terms provided in this section.

I. Defects. The warranty shall provide that the dwelling is free from any substantial defects in material or workmanship. A substantial defect in materials or workmanship shall be

deemed to exist when the completed residential dwelling does not conform to the terms of any written agreement between the purchaser and builder concerning the construction of the new residential dwelling or, in the absence of such an agreement, a substantial defect shall be deemed to exist when the completed new residential dwelling does not conform to a building code adopted by the municipality in which the dwelling is located, or, in the absence of such a local building code, a substantial defect shall be deemed to exist when the completed new residential dwelling does not conform to the applicable standard references in the appendices in the ~~Boca~~ Basic Building Code, 1975 ~~edition~~, as published by the Building Officials Conference of America, Inc. If none of the foregoing criteria is applicable to establishing the existence of a defect, a substantial defect shall be deemed to exist if the completed new residential dwelling does not conform to generally acceptable building practices as used in the area.

2. Violation of statute, ordinance or regulation. The warranty shall provide that any subsurface sewage disposal system intended for use by occupants of the dwelling does not itself, at the time of installation, violate or  
( cause the violation of any municipal ordinance, statute of this State, or regulation promulgated pursuant thereto, including, but not limited to Title 30, chapter 215, subchapter 10, and regulations promulgated thereunder and Title 38, section 413.

3. Corrective action. The warranty shall provide that the builder or manufacturer or both shall correct substantial defects in the material or workmanship and shall correct or reimburse the purchaser for the cost of correcting subsurface sewage disposal systems which, at the time of installation, violate or cause the violation of any municipal ordinance, statute of this State or regulation promulgated pursuant thereto if the purchaser gives written notice of such defects or violations to the builder at the builder's address within 10 days after the expiration of the warranty period.

4. Liability. The warranty shall provide that the builder and manufacturer shall be jointly and severally liable to the purchaser for the fulfillment of the terms of the warranty, and the purchaser shall notify both of the need for appropriate corrective action in instances of substantial defects in materials or workmanship and in instances where the subsurface sewage disposal system, at the time of installation, violates or causes the violation of any municipal ordinance, statute of this State or regulation promulgated pursuant thereto.

5. Notice. The name, address and phone number of the builder where the purchaser / <sup>shall</sup> mail or deliver written notice of defects shall be set forth in the warranty.

6. Primary responsibility. The warranty shall provide that, while the manufacturers of any or all affixed component structures, appliances, mechanical devices or systems may also issue their own warranties, which warranties shall be itemized in the written warranty between the builder and the purchaser, the primary responsibility for appropriate corrective action under the warranty rests with the builder and the purchaser shall report all complaints to the builder initially. This act shall in no way limit any right of action by way of subrogation or otherwise which the builder may have against the manufacturer of any defective component structure, appliance, mechanical device or system or the installer of any subsurface sewage disposal system which, at the time of installation, violates or causes the violation of any municipal ordinance, statute of this State or regulation pursuant thereto.

§1425. Cumulative remedies, prohibition against waiver

The warranty under this chapter shall be in addition to and not in derogation of all other rights and privileges which such purchaser may have under any other law or instrument. The builder shall not require the purchaser to waive his rights under this chapter and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

§1426. Violation as unfair trade practice

Any violation of this chapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

Statement of Fact

The purpose of this/ <sup>amendment</sup> is to provide the purchasers of newly constructed dwellings with a warranty from the builder that the dwelling is free from substantial defects in workmanship and materials. The warranty period will last 18 months, and the purchaser will have both a private right of action for a breach of the warranty and the remedies provided for in the Unfair Trade Practices Act.

The amendment in effect redrafts the bill to correct the language in certain provisions and to add several new provisions.

The amendment makes clear the bill's intent that real estate brokers are not included within the definition of builders and therefore not within the provisions of the bill.

The amendment also clarifies the definition of defects as to material or workmanship, a clarification that is necessary in the absence of a state building code. The amendment



accomplishes this by reference to local building codes and, in the absence of such, to an existing model code.

The amendment brings subsurface sewage disposal systems within the coverage of the warranty standards.

Reported by the Committee on Business Legislation.

Reproduced and distributed under the direction of the Clerk of the House.  
6/11/75

(Filing No. H-720)