

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1044

S.P. 352

In Senate, April 1, 1987

Reference to the Committee on Business Legislation suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BRANNIGAN of Cumberland.
Cosponsored by Representative RYDELL of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Establish a Voluntary Statewide
2 Building Code and Require Basic
3 Written Contracts for Home
4 Construction Work.
5

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

8 Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(6-A) is
9 enacted to read:

10 (6-A) Board of \$35/Day 30 MRSA §4274
11 Building
12 Contractors

13 Sec. 2. 10 MRSA c. 219-A is enacted to read:

14 CHAPTER 219-A

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HOME CONSTRUCTION CONTRACTS

§1486. Definitions

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

1. Change orders. "Change orders" means a written amendment to the home construction contract which becomes part of and in conformance with the existing contract.

2. Down payment. "Down payment" means all payments to a home construction contractor prior to or contemporaneous to the execution of the home repair contract.

3. Goods. "Goods" means all supplies which are used to construct, alter or repair a residence.

4. Home construction. "Home construction" means building, remodeling or repairing a residence of up to 3 living units.

5. Home construction contract. "Home construction contract" means the written contract required for all building, remodeling or repair of a residence of up to 3 living units.

6. Home construction contractor. "Home construction contractor" means any person or his agent who contracts to build, remodel or repair a residence of up to 3 living units.

7. Insulation. "Insulation" means any material, including, but not limited to, mineral, wood, cellulose fiber, vermiculite and perlite and foams to reduce air flow between the interior and exterior surfaces of a building.

8. Person. "Person" means an individual or partnership, corporation or any other legal entity.

9. Residence or residential. "Residence" or "residential" means any existing dwelling structure with 3 or less living units whether lease or

1 owner-occupied. Except as provided in this subsection,
2 buildings used for commercial or business purposes
3 shall not be subject to this chapter.

4 10. Resistance factor. "Resistance factor"
5 shall have the same meaning as "thermal resistance,"
6 as defined in the American Society of Heating,
7 Refrigerating and Air-conditioning Engineers Handbook
8 of Fundamentals.

9 §1487. Home construction contracts

10 Any home construction contract for \$500 or more
11 shall be in writing. Every home construction contract
12 or change order shall be in writing and shall
13 be signed by both the home construction contractor
14 and the homeowner or lessee. Both the contractor and
15 the homeowner or lessee shall receive a copy of the
16 executed contract prior to any work performance.
17 This basic contract shall contain the entire agree-
18 ment between the homeowner or lessee and the home
19 construction contractor and shall contain at least
20 the following parts:

21 1. Name of parties. The name, address and phone
22 number of both the home construction contractor and
23 the homeowner;

24 2. Location. The location of the property upon
25 which the construction work is to be done;

26 3. Work dates. Both the date of commencement of
27 the work and the date when the work will be substan-
28 tially completed;

29 4. Contract price. The total contract price,
30 including all costs to be incurred in the proper per-
31 formance of the work; or if the work is priced ac-
32 ording to a "cost-plus" formula, the agreed-upon
33 price and an estimate of the cost of labor and mate-
34 rials;

35 5. Payment. The method of payment, with the
36 initial down payment being limited to no more than
37 1/3 of the total contract price;

38 6. Description of the work. A description of
39 the work and materials to be used;

1 7. Warranty. A warranty statement which reads:

2 "In addition to any additional warranty de-
3 scribed below, the contractor warrants that
4 the work will be free from faulty materials;
5 constructed according to the standards of
6 the building code applicable for this loca-
7 tion; constructed in a workman-like manner;
8 and fit for habitation. The warranty rights
9 and remedies set forth in the Maine Uniform
10 Commercial Code apply to this contract;"

11 8. Resolution of disputes. A statement allowing
12 the parties the option to adopt one of 3 methods of
13 resolving contract disputes:

14 "If disputes arise concerning the provisions
15 of this contract or the performance by the
16 parties, then the parties agree
17 do not agree to settle these dis-
18 putes by jointly paying for (check only
19 one):

20 (1) Binding arbitration as regulated by the
21 uniform arbitration law, with the parties
22 agreeing to accept as final the arbitrator's
23 decision ();

24 (2) Nonbinding arbitration, with the par-
25 ties free to not accept the arbitrator's de-
26 cision and to seek satisfaction through oth-
27 er means, including a lawsuit (); or

28 (3) Mediation, with the parties agreeing to
29 enter into good faith negotiations through a
30 neutral mediator in order to resolve their
31 differences ();"

32 9. Change orders. A change order statement which
33 reads:

34 "Any alteration or deviation from the above
35 contractual specifications that involve ex-
36 tra cost will be executed only upon the par-
37 ties entering into a written change order;"

1 10. Energy efficiency standards. A statement
2 allowing the parties the option of adopting the
3 State's energy efficiency building standards.

4 "Energy efficiency standards (check one).
5 The parties agree () do not agree
6 () that this construction will meet
7 or exceed the State's efficiency building
8 standards. (Mandatory for publicly-funded
9 buildings, except for single-family homes);"
10 and

11 11. Door-to-door sales. If the contract is be-
12 ing used for sales regulated by the consumer solici-
13 tation sales law, Title 32, chapter 69, subchapter V
14 or the home solicitation sales law, Title 9-A, Part
15 5, then the contract will also contain a description
16 of the consumer's rights to avoid the contract, as
17 set forth in these laws.

18 §1488. Change orders

19 Each change order to a home construction contract
20 becomes a part of and is in conformance with the ex-
21 isting contract. All work shall be performed under
22 the same terms and conditions as specified in the
23 original contract unless otherwise stipulated. The
24 change order shall detail all changes to the original
25 contract that result in a revision of the contract
26 price. The previous contract price shall be stated
27 and the revised price shall also be stated. Both
28 parties shall sign the change order.

29 §1489. Residential insulation contract

30 Any home construction contract which requires the
31 installation of insulation shall clearly and conspic-
32 uously disclose, in a separate, but attached addendum
33 to the basic contract required by section 1488, the
34 following provisions:

35 1. Resistance factor. The resistance factor of
36 the insulation per inch and the thickness in inches
37 to be installed;

38 2. Type of insulation. The type of insulation
39 to be installed;

1 3. Area covered. An estimate of square footage
2 of the area to be covered;

3 4. Degree of flammability. The degree of flam-
4 mability of the insulation;

5 5. Method of insulation. The method of insula-
6 tion to be used;

7 6. Type of ventilation. The type of ventilation
8 to be installed. If no ventilation is to be in-
9 stalled, the contract shall so state;

10 7. Guarantee against settling. Whether the in-
11 stalled insulation is guaranteed against settling
12 and, if so, for how long and to what degree, if not,
13 the contract shall so state;

14 8. Type of vapor barrier. Type of vapor barrier
15 to be installed. If not vapor barrier is to be in-
16 stalled, then the contract shall so state;

17 9. Area to be insulated. The areas of the
18 dwelling to be insulated;

19 10. Changes required. Any construction, recon-
20 struction or structural changes required to install
21 the insulation;

22 11. Work following insulation. Any restoration,
23 finishing or clean-up work to be performed following
24 the installation of insulation;

25 12. Provisions of warranties. The provisions of
26 all warranties; and

27 13. Names. The name and business address of the
28 owner of the firm providing the goods and services
29 provided in the contract.

30 §1490. Exemption

31 This chapter shall not apply to any person who
32 only provides labor or material to the owner or the
33 lessee of a residence for installing insulation in
34 that residence if that person is not primarily en-
35 gaged in the business of installing insulation and if

1 that person does not advertise, solicit or hold him-
2 self out as one who installs insulation. For pur-
3 poses of this section, the term "not primarily
4 engaged in the business of installing insulation" means
5 having gross receipts for the installation of insula-
6 tion which do not exceed either \$2,500 for all labor
7 or \$4,500 for all material in any one year.

8 §1490-A. Development of insulation fact sheet

9 The Office of Energy Resources shall prepare and
10 keep current an informational pamphlet concerning in-
11 sulation materials being used in the State. The
12 pamphlet shall discuss the characteristics of these
13 insulation materials and the positive and negative
14 affects which may result from installation of these
15 materials. The pamphlet shall also include, but
16 shall not be limited to:

17 1. Moisture. Information concerning moisture
18 travel through buildings and the need for proper ven-
19 tilation or the need for vapor barriers following in-
20 stallation of insulation;

21 2. Safety. Information concerning safety fac-
22 tors, including the flammability and toxicity of var-
23 ious types of insulation;

24 3. Installation. Guidelines for proper installa-
25 tion of insulation materials to avoid problems of
26 moisture and to avoid any safety hazards;

27 4. Installation contracts. A narrative descrip-
28 tion of the requirements of this chapter and its pro-
29 visions; and

30 5. Other information. Such other information as
31 the Office of Energy Resources deems necessary or ap-
32 propriate.

33 The Office of Energy Resources shall furnish this
34 pamphlet, upon request, to any citizen of this State
35 without charge. Every person in this State who in-
36 stalls insulation for compensation, prior to entering
37 into any contract or agreement for the installation
38 of insulation in any residence, shall furnish to the
39 owner or lessee of the residence a copy of the pamph-

1 let published pursuant to this section. Any person
2 who violates the provision of this section shall be
3 subject to the forfeiture provisions of section
4 1490-C.

5 §1490-B. Attorney General fact sheet

6 The Department of the Attorney General shall pre-
7 pare and keep current an informational pamphlet con-
8 cerning the requirements of this chapter, including a
9 draft home construction contract and other consumer
10 information concerning home construction. This
11 pamphlet will be published in suitable numbers so
12 that it may be distributed to the public and to mu-
13 nicipalities for distribution to persons applying for
14 building permits.

15 §1490-C. Penalties

16 1. Violation. Any violation of this chapter
17 shall constitute prima facie evidence of a violation
18 of the Unfair Trade Practices Act, Title 5, chapter
19 10.

20 2. Civil penalty. Each violation of this chap-
21 ter constitutes a civil violation and shall be pun-
22 ished by a forfeiture of not less than \$100 or more
23 than \$1,000. No action may be brought for a civil
24 violation under this subsection more than 2 years af-
25 ter the date of the occurrence of the violation. No
26 home construction contractor may be held liable for a
27 civil violation under this subsection if he shows by
28 a preponderance of the evidence that the violation
29 was unintentional and a bona fide error, notwith-
30 standing the maintenance of procedures reasonably
31 adopted to avoid any such error.

32 3. Private remedy. In addition to any other
33 remedy, if a home construction contractor violates
34 this chapter, he is liable to the homeowner or lessee
35 in an amount determined by the court of not less than
36 \$100 nor more than \$1,000 as liquidated damages and
37 for costs and reasonable attorneys fees. No action
38 under this subsection may be brought more than 2
39 years after the date of the occurrence of the viola-
40 tion. No home construction contractor may be held
41 liable under this subsection if he shows by a prepon-

1 derance of the evidence that the violation was unin-
2 tentional and a bona fide error, notwithstanding the
3 maintenance of procedures reasonably adopted to avoid
4 any such error.

5 Sec. 3. 30 MRSA c. 236 is enacted to read:

6 CHAPTER 236

7 STATEWIDE BUILDING CODE

8 §4271. Definitions

9 As used in this chapter, unless the context oth-
10 erwise indicates, the following terms have the fol-
11 lowing meanings.

12 1. Board. "Board" means the Board of Building
13 Contractors, as defined in section 4274.

14 2. BOCA. "BOCA" means the Building Officials
15 and Code Administrators International, 1987 Edition.

16 3. Building. "Building" means any combination
17 of materials, whether portable or fixed, which com-
18 prise a structure affording facilities or shelter for
19 any use or occupancy. "Building" does not mean manu-
20 factured housing or mobile home certified pursuant to
21 the industrialized housing law of the State.

22 4. Building tradesman. "Building tradesman"
23 means an individual, firm, corporation, association
24 or partnership engaged in construction activities.

25 5. Code. "Code" means the statewide building
26 code.

27 6. Construction. "Construction" means the erection,
28 reconstruction, demolition, alteration, conversion,
29 repair and equipping of buildings.

30 7. Local government. "Local government" means
31 any county, city, municipal corporation, town or oth-
32 er political subdivision of this State with authority
33 to establish standards and requirements applicable to
34 the construction of buildings.

1 8. NFPA Code. "NFPA Code" means the National
2 Fire Protection Association Code, Standard #70, 1984
3 Edition.

4 9. Statewide building code. "Statewide building
5 code" means the 1987 Edition of the Building Offi-
6 cial's Code and Administrators International, BOCA,
7 and the National Fire Protection Association Code,
8 NFPA.

9 §4272. Statewide building code

10 1. Code established. The 1987 Edition of the
11 Building Officials Code and Administrators Interna-
12 tional, Inc., including all amendments and suppl-
13 ements to the code through 1987, and the 1984 National
14 Fire Protection Association Code are established as
15 the building code for all building construction
16 throughout the State, including all municipalities,
17 plantations and unorganized places.

18 2. Effective date of the code. The effective
19 date of the statewide building code, as distinguished
20 from the effective date of this chapter is June 30,
21 1988.

22 §4273. Exemptions from this chapter

23 Local governments, by ordinance, may exempt them-
24 selves in 2 ways from the provisions of the statewide
25 building code. The local government exemption op-
26 tions are as follows.

27 1. Local government amended codes. Rather than
28 enforce the statewide building code, any local gov-
29 ernment may adopt by ordinance an amended version of
30 the code. These amendments shall reflect the differ-
31 ing needs of these governments.

32 2. Local government exemption from code. Alter-
33 natively, a local government may elect, by ordinance,
34 to exempt itself from the provisions of the code and
35 to have no building code effective within its bounda-
36 ries.

37 §4274. Board of Building Contractors; administrative
38 authority

1 1. Established. The Board of Building Contractors,
2 as authorized by Title 5, chapter 379, is es-
3 ablished within the Department of Professional and
4 Financial Regulation to administer this chapter. The
5 board shall consist of 8 members appointed by the
6 Governor.

7 2. Duties. The Board of Building Contractors,
8 as defined in this section, shall be the administra-
9 tive authority for the implementation and enforcement
10 of this chapter. The board may promulgate rules,
11 pursuant to Title 5, chapter 375, that adopt, amend
12 or repeal provisions of the statewide building code.
13 Those changes in the code will not take effect for 3
14 months following their promulgation, in order to al-
15 low local governments to decide whether they will
16 adopt those changes. If a local government decides
17 not to adopt those changes, it must do so by amending
18 by ordinance its local version of the statewide
19 building code.

20 3. Appointment and membership. The membership
21 of the board shall consist of 2 municipal building
22 code enforcement officials, one residential building
23 contractor, one commercial or industrial contractor,
24 one professional registered architect actively in-
25 volved in construction contracts, one professional
26 registered engineer actively involved in construction
27 design contracting, the State Fire Marshal and one
28 public member who shall not previously have been af-
29 iliated with the building construction industry.

30 4. Term of office. The term of office shall be
31 3 years, except that of the first appointed members
32 and the State Fire Marshal. Of the members first ap-
33 pointed to the board, the residential building con-
34 tractor and the professional registered engineer
35 shall serve initial terms of one year; one building
36 code enforcement official, the professional regis-
37 tered architect and the commercial industrial con-
38 tractor shall serve initial terms of 2 years; and one
39 building code enforcement official, the residential
40 building contractor and the public member shall serve
41 initial terms of 3 years. No board member may serve
42 more than 2 consecutive terms of office.

1 A. Upon expiration of a member's term, he shall
2 serve until his successor is qualified and ap-
3 pointed. The successor's term shall be 3 years
4 from the date of that expiration regardless of
5 the date of his appointment. Any vacancy shall
6 be filled by appointment for the unexpired term.
7 A member may be removed for cause which shall in-
8 clude excessive absences from meetings of the
9 board. "Excessive absence" means the absence
10 from 3 consecutive board meetings or the absence
11 from 1/4 of the total meetings of the board in a
12 single calendar year.

13 5. Meetings. The board shall meet at least once
14 a year to conduct its business and to elect its offi-
15 cers. Additional meetings may be held as necessary
16 to conduct the business of the board and may be con-
17 vened at the call of the chairman or a majority of
18 the board members.

19 6. Compensation. Members of the board shall be
20 compensated in accordance with Title 5, chapter 379.

21 7. Quorum. A majority of the voting members of
22 the board constitute a quorum. No action may be
23 taken by the board, except by affirmative vote of the
24 majority of those present and voting.

25 §4275. Effects of statewide building code on local
26 building codes

27 Until the effective date of the statewide build-
28 ing code, as defined in section 4272, building regu-
29 lations adopted by a local government shall continue
30 in effect unless repealed by local law or ordinance.
31 The statewide building code shall apply to all build-
32 ing construction in the State unless a local govern-
33 ment adopts by ordinance amendments to the statewide
34 building code or declares by ordinance that no build-
35 ing code at all shall be effective within its bounda-
36 ries.

1

STATEMENT OF FACT

2 Faulty home construction is an increasingly com-
3 mon consumer problem. This bill attempts to allevi-
4 ate in 2 ways many causes of faulty home construc-
5 tion. First, it requires that all home construction
6 contracts for \$500 or more shall be in writing. Sec-
7 ondly, it establishes a voluntary statewide building
8 code. Local governments may choose to amend this
9 statewide building code or choose to not have any
10 building code apply within its boundaries.

11 The bill requirements for written disclosures
12 when installing home insulation are already required
13 by state law and have been integrated into the broad-
14 er contract requirements of this bill.

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