# MAINE STATE LEGISLATURE

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## (New Draft of S.P. 352, L.D. 1044) (New Title) SECOND REGULAR SESSION

# ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2175

S.P. 838

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follows:

In Senate, February 1, 1988

Reported by Senator Whitmore of Androscoggin for the Committee on Business Legislation and printed under Joint Rule 2. Original Bill sponsored by Senator Brannigan of Portland. Cosponsored by: Representative Rydell of Brunswick.

JOY J. O'BRIEN, Secretary of the Senate

#### STATE OF MAINE

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

AN ACT to Require Basic Written Contracts for

			Нс	Home Construction Work.								
Be	it	enacted	bv	the	People	of	the	State	of	Maine	as	

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

7 CHAPTER 219-A

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### §1486. Definitions

- As used in this chapter, unless the context 3 otherwise indicates, the following terms have 4
- 5 following meanings.
- 1. Change orders. "Change orders" means a written amendment to the home construction contract 6 7 which becomes part of and in conformance with the 8 9 existing contract.
- 2. Down payment. "Down payment" means 10 payments to a home construction contractor prior to or 11 12 contemporaneous with the execution of the home 13
- construction contract.
- 3. Materials. "Materials" means all supplies which are used to contruct, alter or repair a 14 15 residence. 16
- 4. Home construction contract. "Home construction contract" means a contract to build, 17 18 19 remodel or repair a residence.
- 5. Residence. "Residence" means a dwelling structure with 3 or less living units and garages. 20 21 22 Buildings used for commercial or business purposes are
- 23 not be subject to this chapter.
- 24 \$1487. Home construction contracts
- Any home construction contract for more than \$1,400 in materials or labor must be in writing and 25 26
- 27 must be signed by both the home construction contractor and the homeowner or lessee. 28 Both the
- contractor and the homeowner or lessee shall receive a copy of the executed contract prior to any work 29
- 30 performance. This basic contract must contain the 31
- entire agreement between the homeowner or lessee and 32 33 the home construction contractor and must contain at
- least the following parts: 34

	1	1. Names of parties. The name, address and phone
٠ الر	2	number of both the home construction contractor and
	3	the homeowner or lessee;
	-	The state of the s
	4	2. Location. The location of the property upon
	5	which the construction work is to be done;
	•	Willest Conseiled Control Work 15 to 50 Control
	6	3. Work dates. Both the estimated date of
	7	commencement of work and the estimated date when the
	8	work will be substantially completed;
	U	WOLK WILL BE SUBSCANCIALLY COMPLETERY
	9	4. Contract price. The total contract price,
	10	including all costs to be incurred in the proper
	11	performance of the work or if the work is priged
	12	performance of the work, or, if the work is priced according to a "cost-plus" formula, the agreed-upon
	13	price and an estimate of the cost of labor and
	14	materials;
	14	materials;
	15	5 Daymont Who method of naument with the
	16	5. Payment. The method of payment, with the initial down payment being limited to no more than 1/3
	17	
	Ι/	of the total contract price;
	18	6 Description of the work A conoral
	19	6. Description of the work. A general description of the work and materials to be used;
	19	description of the work and materials to be used;
~. ,	20	7. Warranty. A warranty statement which reads:
)	20	7. Wallanty. A wallanty statement which reads:
	21	UTn addition to one additional corresption
	22	"In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from
	23	agreed to by the parties, the contractor
	24	faulty materials; constructed according to
	25	the standards of the building code applicable
	26	for this location; constructed in a skillful manner and fit for habitation. The warranty
	27	
	28	rights and remedies set forth in the Maine
	29	Uniform Commerical Code apply to this
	30	contract;"
	21	
	31	8. Resolution of disputes. A statement allowing
	32	8. Resolution of disputes. A statement allowing the parties the option to adopt one of 3 methods of resolving contract disputes. At a minimum, this
	33	resolving contract disputes. At a minimum, this
	34	statement must provide the following information:

1		"If a dispute arises concerning the
2	•	provisions of this contract or the
3	•	performance by the parties, then the parties
4		performance by the parties, then the parties agree to settle this dispute by jointly
5		paying for one of the following (check only
6		one):
U		One):
7		(1) Binding arbitration as regulated by
		(1) Binding arbitration as regulated by
8		the Maine Uniform Arbitration Act, with
9		the parties agreeing to accept as final
.0		the arbitrator's decision ( );
.1	1.1	(2) Nonbinding arbitration, with the
.2 .3		parties free to not accept the
.3		arbitrator's decision and to seek
4		satisfaction through other means,
.5		arbitrator's decision and to seek satisfaction through other means, including a lawsuit ( ); or
6		(3) Mediation, with the parties
.7	1 2	agreeing to enter into good faith
.8		agreeing to enter into good faith negotiations through a neutral mediator
9		in order to attempt to resolve their
0		differences ( )";
. 0	4.4	differences (
1	9.	Change orders. A change order statement which
2	reads:	Change Orders. A change order beatement which
. 4	reaus.	
23		"Any alteration or deviation from the above
4		contractual specifications that involve extra
	**	
25		cost will be executed only upon the parties
6		entering into a written change order";
	7.0	Description and the state of the section of the being
27	10.	Door-to-door sales. If the contract is being
8	used for	sales regulated by the consumer solicitation
9	sales la	w, Title 32, chapter 69, subchapter V or the
30	home sol	licitation sales law, Title 9-A, Part 5, a
31	descript:	ion of the consumer's rights to avoid the
2	contract,	, as set forth in these laws; and
3	11.	Residential insulation. If the construction installation of insulation in an existing
34	includes	installation of insulation in an existing
35 <sub>1</sub>	residence	e, any disclosures required by chapter 219,
36 <sup>°</sup>	Insulation	on Contractors.

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Change orders

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§1488.

	1	Each change order to a home construction contract
	2	must be in writing and becomes a part of and is in
	3	conformance with the existing contract. All work
	4	shall be performed under the same terms and conditions
_	<b>5</b> .	as specified in the original contract unless otherwise
)	6	stipulated. The change order must detail all changes
ノ	7	to the original contract that result in a revision of
-	8	the contract price. The previous contract price must
	9	be stated and the revised price shall also be stated.
	10	Both parties must sign the change order.
		· · · · · · · · · · · · · · · · · · ·
	11	§1489. Exemption
	12	Parties to a home construction contract may exempt
	13	themselves from the requirements of this chapter only
	14	if the contractor specifically informs the homeowner
	15	or lessee of his rights under this chapter and the
	16	parties then mutually agree to a contract or change
	17	order that does not contain the parts set forth in
	18	sections 1487 and 1488.
	10	BCCCIONS 1407 QNG 1400:
	19	§1490. Penalties
	20	1. Violation. Any violation of this chapter
	21	shall constitute prima facie evidence of a violation
1	22	of the Unfair Trade Practices Act, Title 5, chapter 10.
j.		01 0110 011201 1100 1100 1100 1100 1
	23	2. Civil penalty. Each violation of this chapter
	24	constitutes a civil violation for which a forfeiture
	25	of not less than \$100 nor more than \$1,000 may be adjudged. No action may be brought for a civil violation under this subsection more than 2 years
	26	adjudged. No action may be brought for a civil
	27	violation under this subsection more than 2 years
	28	after the date of the occurrence of the violation. No
	29	home construction contractor may be held liable for a
	30	civil violation under this subsection if the
	31	contractor shows by a preponderance of the evidence
	32	that the violation was unintentional and a bona fide
	33	error, notwithstanding the maintenance of procedures
	34	reasonably adopted to avoid any such error.
	74	reasonably adopted to avoid any such error.

STATEMENT OF FACT

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This new draft requires written contracts for any

home construction contract to build, remodel or repair a residence or garage which totals more than \$1,400 in materials and labor. It allows parties to exempt themselves from the provision of this new draft by mutual agreement. The new draft does not include the provisions for a statewide building code which were part of the original bill.

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