

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1038

H.P. 756

House of Representatives, March 6, 2007

An Act To License Home Building and Improvement Contractors

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative HINCK of Portland.

Cosponsored by Representatives: FLETCHER of Winslow, PILON of Saco and

Representatives: BEAUDETTE of Biddeford, BRAUTIGAM of Falmouth, JACKSON of Allagash, SAMSON of Auburn, SMITH of Monmouth, Senators: BARTLETT of Cumberland, SCHNEIDER of Penobscot.

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§20-A** is enacted to read:

3 **20-A.**

4 Maine Home Contractor
5 Licensing Board

Public Members
Legislative Per Diem
Other Members No
Compensation
Authorized

32 MRSA §15503

9 **Sec. 2. 32 MRSA c. 137** is enacted to read:

10 **CHAPTER 137**

11 **MAINE HOME CONTRACTOR LICENSING ACT**

12 **§17001. Short title**

13 This chapter may be known and cited as "the Maine Home Contractor Licensing
14 Act."

15 **§17002. Definitions**

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

18 **1. Applicant.** "Applicant" means a person who applies for a license under this
19 chapter.

20 **2. Board.** "Board" means the Maine Home Contractor Licensing Board as set out in
21 this chapter.

22 **3. Chimney.** "Chimney" means a structure designed to lift fumes from the firebox
23 up and out of a dwelling. "Chimney" includes the firebox, chimney back, cap, flue, post
24 and pot.

25 **4. Commissioner.** "Commissioner" means the Commissioner of Professional and
26 Financial Regulation.

27 **5. Contract.** "Contract" means an agreement between an owner and a home
28 contractor to build a dwelling or perform any home improvements on a dwelling.

29 **6. Department.** "Department" means the Department of Professional and Financial
30 Regulation.

1 **7. Dwelling.** "Dwelling" means any building that is owner-occupied or constructed
2 for sale to an owner-occupant and contains at least one and no more than 2 dwelling
3 units.

4 **8. Dwelling unit.** "Dwelling unit" means a single unit providing complete
5 independent living facilities for one or more persons, including permanent provisions for
6 living, sleeping, eating, cooking and sanitation.

7 **9. Employee.** "Employee" has the same meaning as provided in Title 26, section
8 591, subsection 1.

9 **10. Framing.** "Framing" means the erection of the frame, flooring system, interior
10 walls, backing, trusses, rafters, beams, stairs and soffits of a dwelling and all work related
11 to the construction of the structure of the dwelling above the foundation.

12 **11. Home contractor.** "Home contractor" means a person who enters into a
13 contract, offers to enter into a contract or submits a bid to enter into a contract with an
14 owner to:

15 A. Build a dwelling; or

16 B. Perform any home improvement to a dwelling.

17 **12. Home contractor services.** "Home contractor services" means those services,
18 including home improvement, performed by a home contractor licensed under this
19 chapter.

20 **13. Home improvement.** "Home improvement" means:

21 A. The construction, replacement, installation or improvement of additions of
22 livable space, garages, carports, porches or decks, if they are used in conjunction with
23 a dwelling; and

24 B. Framing, roofing and the removal, repair, replacement or installation of siding,
25 insulation, windows or chimneys.

26 "Home improvement" does not include redecorating or other cosmetic work.

27 **14. Insulation.** "Insulation" means any material high in resistance to heat
28 transmission that, when placed in the walls, ceiling or floors of a structure, is used for the
29 purpose of reducing the rate of heat flow.

30 **15. Licensee.** "Licensee" means a person who is issued a license to do business in
31 this State under this chapter.

32 **16. Owner.** "Owner" means any owner, lessee or person who orders, contracts for
33 or purchases home contractor services or person entitled to enforce the performance of
34 the work of a home contractor.

35 **17. Person.** "Person" means any natural person, corporation, partnership or other
36 business entity.

1 18. Roofing. "Roofing" means the installation of materials that form a weathertight
2 surface on the roof of a dwelling, including but not limited to wood, cement, asbestos,
3 clay tile and composition shingles, metal roofing, single-ply and built-up roofing
4 materials and all associated flashings and gravel stops.

5 19. Siding. "Siding" means the finished exterior covering of the outside walls of a
6 frame dwelling.

7 20. Window. "Window" includes a window sash, window frame and windowpane.

8 **§17003. Board; organization**

9 The Maine Home Contractor Licensing Board, as established in Title 5, section
10 12004-A, subsection 20-A, administers the provisions of this chapter to protect the public
11 with respect to the practice of home contracting. All members must be appointed and the
12 board shall first convene no later than September 1, 2008.

13 1. Board membership. The board consists of 9 members, appointed by the
14 Governor, as follows:

15 A. Two public members;

16 B. Four home contractors having at least 5 years of experience as a home contractor,
17 appointed by the Governor. After the expiration of the initial term of these members,
18 the members must be licensed home contractors;

19 C. One municipal code enforcement officer;

20 D. One engineer or architect, licensed under this Title, with experience in the design
21 or construction of dwellings, who serves as an ex officio nonvoting member; and

22 E. One representative of the fire service in this State, who serves as an ex officio
23 nonvoting member.

24 2. Terms; removal. The term of office of each member is 4 years, except as
25 provided in this subsection, and members are eligible for reappointment. If there is a
26 vacancy for any cause, the Governor shall make an appointment immediately effective
27 for the unexpired term. Members may be removed by the Governor for cause. In order
28 to provide staggered expiration dates of terms, the duration of initial terms is as follows:

29 A. The fire service representative for 2 years;

30 B. One public member for 3 years;

31 C. One public member for 4 years;

32 D. One home contractor for 2 years;

33 E. One home contractor for 3 years;

34 F. One home contractor for 4 years;

35 G. One home contractor for 5 years;

36 H. The municipal code enforcement officer for 4 years; and

1 1. The engineer or architect for 2 years.

2 3. Meetings; quorum. The board shall meet at least once a year and at such other
3 times as the board determines necessary. A majority of the members of the board
4 constitutes a quorum for the transaction of business under this chapter.

5 4. Election of officers. The board shall annually elect a chair and other officers as
6 the board determines necessary.

7 §17004. Rules

8 The board shall establish guidelines and rules by which this chapter is administered.
9 Except as otherwise indicated, rules adopted pursuant to this chapter are routine technical
10 rules as defined in Title 5, chapter 375, subchapter 2-A. The board shall adopt rules:

11 1. License qualifications. Relating to the qualifications of an applicant for a license
12 authorized under this chapter, as provided in section 17007, subsections 4 and 5;

13 2. Standards of practice. To establish standards of practice consistent with the
14 standards set forth in this chapter and the Maine Model Residential Building Code
15 adopted in this chapter governing the practice of home construction or home
16 improvement;

17 3. Continuing education. Concerning requirements for continuing education to be
18 completed by an applicant as a prerequisite to renewal of a home contractor's license; and

19 4. Renewal. Concerning license renewal. Licenses expire annually on December
20 31st or on a date the commissioner determines. The board shall issue a renewal license
21 upon receipt of the written request for renewal, the annual fee and evidence of
22 satisfactory completion of the continuing education requirement pursuant to subsection 3.
23 Licenses may be renewed up to 90 days after expiration upon payment of a late fee in
24 addition to the renewal fee. A person who submits an application for renewal more than
25 90 days after the license expiration date is subject to all requirements governing new
26 applicants under this chapter.

27 §17005. Fees

28 The Director of the Office of Licensing and Registration within the department,
29 pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule
30 fees for purposes authorized under this chapter in amounts that are reasonable and
31 necessary for their respective purposes, except that a fee may not exceed the following:

32 1. General home contractor license. For a general home contractor license under
33 section 17007, \$350 annually;

34 2. Specialty license. For a specialty license under section 17007, \$150 annually; and

35 3. Registration under section 17016. For registration pursuant to section 17016,
36 \$150 annually.

1 Fees may be used by the Director of the Office of Licensing and Registration only for
2 the purposes of this chapter.

3 **§17006. Duties; powers**

4 The board has the following duties and powers in addition to those otherwise set forth
5 in this chapter.

6 **1. Consent agreements.** The board may execute a consent agreement that resolves a
7 complaint or investigation without further proceedings pursuant to Title 10, section 8003,
8 subsection 5, paragraph B.

9 **2. Denial of license.** The board may not refuse to issue or renew a license for a
10 reason other than the failure to pay a required fee unless the applicant has been afforded
11 an opportunity for an adjudicatory hearing consistent with the board's rules.

12 **3. Hearings.** The board shall conduct hearings in accordance with Title 5, chapter
13 375, subchapter 4 to the extent applicable. The board, after hearing, may impose
14 disciplinary sanctions pursuant to Title 10, section 8003, subsection 5, paragraph A-1. In
15 addition, the board may revoke or suspend a license pursuant to Title 5, section 10004.

16 **4. Investigation.** The board may investigate or cause to be investigated any
17 complaint made to the board and any case of noncompliance with or violation of this
18 chapter.

19 **5. License qualification.** The board shall evaluate a person's qualifications for
20 licensure under this chapter.

21 **§17007. Licensing; application**

22 **1. License required.** A person who acts as a home contractor must be licensed
23 under this section. The board may grant the following licenses:

24 A. General home contractor licenses; and

25 B. Licenses specific to trades listed in section 17002, subsection 13, paragraph B.

26 **2. Applications.** Applications for licenses under this chapter must be submitted to
27 the board on forms prescribed and furnished by the board and must contain the
28 information and be accompanied by the attachments required by rule of the board,
29 together with the prescribed fee.

30 **3. Criminal history information.** Pursuant to Title 5, chapter 341, an applicant
31 under this section shall provide criminal history record information.

32 **4. Requirements for licensure as general home contractor.** A person is qualified
33 for a general home contractor license if the person:

34 A. Has:

- 1 (1) Completed a combination of 4 years of relevant experience and education, as
2 determined by the board, within one year after the date the licensing provisions
3 under this chapter become effective pursuant to section 17016;
- 4 (2) Acknowledged, on a form provided by the board, an awareness of the board's
5 adoption of a building code under section 17015;
- 6 (3) Demonstrated, in a manner determined by the board, a familiarity with Title
7 10, chapter 219-A; and
- 8 (4) Completed any other requirements the board determines are necessary for
9 licensure; or

10 B. Has:

- 11 (1) Completed a combination of 2 years of relevant experience and education, as
12 determined by the board, within one year after the date the licensing provisions of
13 this chapter become effective pursuant to section 17016;
- 14 (2) Passed a general home contractor examination approved and adopted by the
15 board that includes a test of proficiency in the building code under section 17015;
- 16 (3) Demonstrated, in a manner determined by the board, a familiarity with Title
17 10, chapter 219-A; and
- 18 (4) Completed any other requirements the board determines are necessary for
19 licensure.

20 **5. Requirements for licensure in specialty.** A person is qualified for a specialty
21 license, including a license to remove, repair, replace and install framing, roofing, siding,
22 insulation, windows or chimneys, as appropriate, if the person:

23 A. Has:

- 24 (1) Completed a combination of 2 years of relevant experience and education in
25 the specialty, as determined by the board, within one year after the date the
26 licensing provisions of this chapter become effective pursuant to section 17016;
- 27 (2) Acknowledged, on a form provided by the board, an awareness of the State's
28 adoption of a building code under section 17015;
- 29 (3) Demonstrated, in a manner determined by the board, a familiarity with Title
30 10, chapter 219-A; and
- 31 (4) Completed any other requirements the board determines are necessary for
32 licensure; or

33 B. Has:

- 34 (1) Completed a combination of one year of relevant experience and education in
35 the specialty, as determined by the board, within one year after the date the
36 licensing provisions of this chapter become effective pursuant to section 17016;
- 37 (2) Passed an examination in the specialty approved and adopted by the board
38 that includes a test of proficiency in those sections of the building code under
39 section 17015 that relate to the specialty;

1 (3) Demonstrated, in a manner determined by the board, a familiarity with Title
2 10, chapter 219-A; and

3 (4) Completed any other requirements the board determines are necessary for
4 licensure.

5 **§17008. Exemptions to licensing**

6 A license is not required under this chapter for a person who:

7 1. Home contractor. Acts as a home contractor but who does not receive \$3,000 or
8 more from any one owner in a calendar year;

9 2. Labor; services. Performs labor or services for a home contractor licensed under
10 this chapter;

11 3. Trade; profession. Holds a license for a trade or profession and is acting within
12 the scope of the trade or profession for which the person is licensed;

13 4. Representative. Is an authorized representative of the United States Government,
14 the State or any incorporated municipality, county or other political subdivision of this
15 State who is acting within the scope of that representative's authorization;

16 5. Ownership interest. Performs work on a dwelling in which that person has an
17 ownership interest or is a lessee performing work on the lessee's leased property;

18 6. Certified applied technology program. Is a student enrolled in a certified
19 applied technology program in which the student works under the direct supervision of a
20 home contractor licensed under this chapter;

21 7. Public utility. Is a public utility operating under the laws and rules of the Public
22 Utilities Commission in construction, maintenance or development work incidental to the
23 public utility's business; or

24 8. Manufactured housing. Is licensed by the Manufactured Housing Board and
25 performs home construction services in connection with the construction or installation of
26 manufactured housing.

27 **§17009. License limitation**

28 A license issued under this chapter may be issued to a person or a business entity. If
29 the applicant is a corporation, partnership, limited liability company or other business
30 entity, the entity must designate at least one qualifying natural person who is a partner,
31 member, officer, manager or employee and who meets the professional qualifications
32 required of licensees. In the event the designated natural person no longer holds the
33 qualifying relationship with the entity due to death or separation, the entity must
34 designate another natural person within 6 months from the date of death or separation and
35 qualify that person as soon as is practical.

36 An entity may conduct business under a trade name if its license is issued under the
37 trade name. The board may refuse to issue a license under a specific trade name if the

1 name is considered to be misleading, deceptive or likely to result in confusion with other
2 existing businesses.

3 **§17010. Changes in circumstances**

4 A licensee shall report a change of address or name or other material change in the
5 condition or qualifications set forth in the original license application no later than 30
6 days after the change. Upon proper notice, the board's records must be changed and a new
7 license issued for the unexpired term of the current license if appropriate.

8 **§17011. Denial of license**

9 The board may deny a license if an applicant:

10 **1. Fails to submit completed application.** Fails to submit a completed application
11 within 30 days after being notified of the materials needed to complete the application;

12 **2. Fails to satisfy qualifications or standards.** Fails to meet license qualifications
13 or to satisfy standards of practice as adopted by the board pursuant to section 17004,
14 subsections 1 and 2;

15 **3. Suspension or revocation of license.** Has had a professional or occupational
16 license suspended or revoked for disciplinary reasons or an application rejected for
17 reasons relating to untrustworthiness within 3 years prior to the date of application; or

18 **4. Conviction of crime.** Is subject to disqualification based on the applicant's
19 criminal history record information pursuant to Title 5, chapter 341.

20 **§17012. Financial disclosures**

21 An applicant for licensure under this chapter must file with the board the following
22 information:

23 **1. Nature of business.** A complete statement of the general nature of the applicant's
24 contracting business or the applicant's duties;

25 **2. Unsatisfied judgments.** Any final judgment owed to a consumer, based on a
26 finding of fraud or breach of express or implied warranty of good workmanship, that
27 remains unsatisfied 90 days after entry of judgment by a court of competent jurisdiction;
28 and

29 **3. Bankruptcy.** Any pending petition in bankruptcy or discharge in bankruptcy
30 within 7 years from the date of application.

31 **§17013. Penalties; injunction**

32 Violations of licensing requirements under this chapter are governed by the
33 provisions of Title 10, section 8003-C.

1 **§17014. Grounds for disciplinary action**

2 After a hearing pursuant to section 17006, subsection 3, the board may refuse to issue
3 or renew any license or impose disciplinary sanctions pursuant to Title 10, section 8003 if
4 the licensee is found to have committed one or more of the following:

5 **1. Criminal record.** Subject to Title 5, chapter 341, any conviction of a crime
6 described in Title 5, section 5301, subsection 2;

7 **2. Fraud or incompetence.** An act or conduct that constitutes fraud or
8 incompetence in acting as a home contractor;

9 **3. False statement.** Procuring or attempting to procure a license under this chapter
10 by knowingly making a false statement, submitting false information or making a
11 material misrepresentation in an application filed with the board;

12 **4. Aiding and abetting.** Aiding and abetting a person in conduct that constitutes a
13 violation of this chapter; and

14 **5. Rule or law violation.** Violating a rule adopted by the board or a provision of
15 this chapter.

16 **§17015. Building code**

17 **1. Code designated; amendments; final adoption.** On January 1, 2008, the board
18 shall begin considering amendments to the 2003 edition of the International Residential
19 Code for adoption. On July 15, 2008, the board shall adopt the 2003 edition of the
20 International Residential Code with all amendments the board has determined to be in the
21 best interests of the State, which may be known thereafter as "the Maine Model
22 Residential Building Code." Other codes and standards referenced within the 2003
23 edition of the International Residential Code may not be automatically adopted by the
24 board by reference as part of the Maine Model Residential Building Code. The board
25 may amend the Maine Model Residential Building Code annually thereafter, including by
26 incorporation of a later version of the International Residential Code upon finding that the
27 amendments are in the best interests of the State.

28 **2. Preemption.** The energy efficiency standards adopted pursuant to Title 10,
29 section 1415-C, the fire safety codes and standards adopted pursuant to Title 25, sections
30 2452 and 2465, the electrical code adopted pursuant to section 1153-A, the oil and solid
31 fuel equipment standards adopted pursuant to section 2313, the plumbing code adopted
32 pursuant to section 3403-B, the propane and natural gas equipment standards adopted
33 pursuant to section 14805, the boiler and pressure vessel standards adopted pursuant to
34 section 15104-A and the elevator standards adopted pursuant to section 15228 preempt
35 the chapters of the Maine Model Residential Building Code that cover the same aspects
36 of dwelling construction or improvement.

37 A residential building code adopted by a town, city or municipality prior to the date on
38 which this chapter takes effect is not preempted by this section.

1 **3. Limitation on code adoption.** A town, city or municipality may not adopt a
2 residential building code after the date on which this chapter becomes effective other than
3 the Maine Model Residential Building Code or the 2003 edition of the International
4 Residential Code plus any local amendments that a town, city or municipality has made
5 to the code.

6 **4. Notification of code adoption.** A town, city or municipality shall notify the
7 board, on a form provided by the board, of its adoption of the Maine Model Residential
8 Building Code or the 2003 edition of the International Residential Code plus any local
9 amendments that a town, city or municipality has made to the code within 30 days of its
10 adoption.

11 **§17016. Licensing effective; prior registration**

12 **1. Licensing effective.** The provisions of this chapter requiring licensure become
13 effective one year after the registration date, which is the first day of January of the year
14 following the year in which:

15 **A.** The total number of the following towns, cities and municipalities that have
16 adopted the 2003 edition of the International Residential Code or the Maine Model
17 Residential Building Code reaches 56: Acton; Alfred; Arundel; Ashland; Auburn;
18 Augusta; Bar Harbor; Bath; Belfast; Biddeford; Brewer; Bridgton; Brunswick;
19 Buxton; Calais; Cape Elizabeth; Caribou; Carrabassett Valley; Cumberland; Dayton;
20 Dedham; Durham; Eastport; Falmouth; Farmington; Fort Fairfield; Freeport;
21 Gardiner; Gorham; Gray; Hallowell; Hampden; Herman; Holden; Hollis; Houlton;
22 Kennebunk; Kennebunkport; Lebanon; Lewiston; Limington; Lisbon; Long Island;
23 Lovell; Lyman; Manchester; Mechanic Falls; Newfield; Newport; North Yarmouth;
24 Ogunquit; Old Orchard Beach; Old Town; Orono; Otisfield; Paris; Poland; Portland;
25 Presque Isle; Rangeley; Raymond; Richmond; Rockland; Rumford; Saco; Sanford;
26 Scarborough; Shapleigh; South Berwick; South Portland; Standish; Thomaston;
27 Topsham; Trenton; Turner; Veazie; Waterboro; Waterville; Wells; Westbrook;
28 Windham; Winslow; and Yarmouth; and

29 **B.** The total population, as determined by the 2000 Federal Decennial Census, of the
30 towns, cities and municipalities listed in paragraph A that have adopted the 2003
31 edition of the International Residential Code or the Maine Model Residential
32 Building Code is no less than 75% of the total population, as determined by the 2000
33 Federal Decennial Census, of the towns, cities and municipalities listed in paragraph
34 A.

35 The legislative body of a town, city or municipality shall notify the commissioner when
36 that town, city or municipality has adopted the 2003 edition of the International
37 Residential Code or the Maine Model Residential Building Code. Once the total number
38 of towns, cities and municipalities that have adopted the 2003 edition of the International
39 Residential Code or the Maine Model Residential Building Code reaches 56, the
40 commissioner shall immediately notify the Office of the Revisor of Statutes.

41 **2. Fee.** The fee for registration pursuant to this section is \$150 annually.

