

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 272

H.P. 215

House of Representatives, January 27, 2009

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 MacDONALD of Boothbay.

Cosponsored by Representatives: CROCKETT of Augusta, PILON of Saco, Senator SCHNEIDER of Penobscot and Representatives: BEAUDETTE of Biddeford, CLEARY of Houlton, GILES of Belfast, HINCK of Portland, MILLER of Somerville, RUSSELL of Portland, SMITH of Monmouth.

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 §17003

9 Sec. 2. 32 MRSA c. 136 is enacted to read:

10 CHAPTER 136

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.

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

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

4 **9. Employee.** "Employee" has the same meaning as provided in Title 26, section
5 591, subsection 1.

6 **10. Family member.** "Family member" means a spouse, domestic partner, parent,
7 child, brother or sister.

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

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

14 A. Build a dwelling; or

15 B. Perform any home improvement to a dwelling.

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

19 **14. Home improvement.** "Home improvement" means:

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

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

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

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

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

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

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

36 **19. Roofing.** "Roofing" means the installation of materials that form a weathertight
37 surface on the roof of a dwelling, including but not limited to wood, cement, asbestos,

1 clay tile and composition shingles, metal roofing, single-ply and built-up roofing
2 materials and all associated flashings and gravel stops.

3 20. Siding. "Siding" means the finished exterior covering of the outside walls of a
4 frame dwelling.

5 21. Window. "Window" includes a window sash, window frame and windowpane.

6 **§17003. Board; organization**

7 The Maine Home Contractor Licensing Board, as established in Title 5, section
8 12004-A, subsection 20-A, administers the provisions of this chapter to protect the public
9 with respect to the practice of home contracting. All members must be appointed and the
10 board shall first convene no later than September 1, 2010.

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

13 A. Two public members;

14 B. Four home contractors having at least 5 years of experience as a home contractor.
15 After the expiration of the initial term of members under this paragraph, the members
16 must be licensed home contractors;

17 C. One municipal code enforcement officer;

18 D. One engineer or architect, licensed under this Title, with experience in the design
19 or construction of dwellings, who serves as a nonvoting member; and

20 E. One representative of the fire service in this State, who serves as a nonvoting
21 member.

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

27 A. For the fire service representative, 2 years;

28 B. For one public member, 3 years;

29 C. For one public member, 4 years;

30 D. For one home contractor, 2 years;

31 E. For one home contractor, 3 years;

32 F. For one home contractor, 4 years;

33 G. For one home contractor, 5 years;

34 H. For the municipal code enforcement officer, 4 years; and

35 I. For the engineer or architect, 2 years.

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

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

6 **§17004. Rules**

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

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

12 2. Standards of practice. To establish standards of practice consistent with the
13 standards set forth in this chapter;

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

16 4. Renewal. Concerning license renewal. Licenses expire annually on December
17 31st or on a date the commissioner determines. The board shall issue a renewal license
18 upon receipt of the written request for renewal, the annual fee and evidence of
19 satisfactory completion of the continuing education requirement pursuant to subsection 3.
20 Licenses may be renewed up to 90 days after expiration upon payment of a late fee in
21 addition to the renewal fee. A person who submits an application for renewal more than
22 90 days after the license expiration date is subject to all requirements governing new
23 applicants under this chapter.

24 **§17005. Fees**

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

29 1. General home contractor license. For a general home contractor license under
30 section 17007, subsection 1, paragraph A, \$350 annually;

31 2. Specialty license. For a specialty license under section 17007, subsection 1,
32 paragraph B, \$150 annually; and

33 3. Registration under section 17015. For registration pursuant to section 17015,
34 \$150 annually.

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

1 **§17006. Duties; powers**

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

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

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

10 **3. Hearings.** The board shall conduct hearings in accordance with Title 5, chapter
11 375, subchapter 4 to the extent applicable. The board, after hearing, may impose
12 disciplinary sanctions pursuant to Title 10, section 8003, subsection 5, paragraph A-1. In
13 addition, the board may revoke or suspend a license pursuant to Title 5, section 10004.

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

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

19 **§17007. Licensing; application**

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

22 A. General home contractor licenses; and

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

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

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

30 **4. Requirements for licensure as general home contractor.** A person is qualified
31 for a general home contractor license under subsection 1, paragraph A if the person:

32 A. Has:

33 (1) Completed a combination of 4 years of relevant experience and education, as
34 determined by the board, within one year after the effective date of this section;

35 (2) Demonstrated, in a manner determined by the board, a familiarity with Title
36 10, chapter 219-A; and

1 (3) Completed any other requirements the board determines are necessary for
2 licensure; or

3 B. Has:

4 (1) Completed a combination of 2 years of relevant experience and education, as
5 determined by the board, within one year after the effective date of this section;

6 (2) Passed a general home contractor license examination approved and adopted
7 by the board;

8 (3) Demonstrated, in a manner determined by the board, a familiarity with Title
9 10, chapter 219-A; and

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

12 5. Requirements for licensure in specialty. A person is qualified for a specialty
13 license under section 17007, subsection 1, paragraph B, including a license to remove,
14 repair, replace and install framing, roofing, siding, insulation, windows or chimneys, as
15 appropriate, if the person:

16 A. Has:

17 (1) Completed a combination of 2 years of relevant experience and education in
18 the specialty, as determined by the board, within one year after the effective date
19 of this section;

20 (2) Demonstrated, in a manner determined by the board, a familiarity with Title
21 10, chapter 219-A; and

22 (3) Completed any other requirements the board determines are necessary for
23 licensure; or

24 B. Has:

25 (1) Completed a combination of one year of relevant experience and education in
26 the specialty, as determined by the board, within one year after the effective date
27 of this section;

28 (2) Passed an examination in the specialty approved and adopted by the board;

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.

33 6. Effective date. This section takes effect January 1, 2011.

34 §17008. Exemptions to licensing

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

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

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

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

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

8 5. Ownership interest; family member. Performs work on a dwelling in which
9 that person has an ownership interest or that is owned by a family member or who is a
10 lessee performing work on the lessee's leased property;

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

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

17 8. Manufactured housing. Is licensed by the Manufactured Housing Board and
18 performs home construction services in connection with the construction or installation of
19 manufactured housing.

20 **§17009. License limitation**

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

29 An entity may conduct business under a trade name if its license is issued under the
30 trade name. The board may refuse to issue a license under a specific trade name if the
31 name is considered to be misleading, deceptive or likely to result in confusion with other
32 existing businesses.

33 **§17010. Changes in circumstances**

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

1 **§17011. Denial of license**

2 The board may deny a license if an applicant:

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

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

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

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

13 **§17012. Financial disclosures**

14 An applicant for licensure under this chapter must file with the board the following
15 information:

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

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

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

24 **§17013. Penalties; injunction**

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

27 **§17014. Grounds for disciplinary action**

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

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

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

