

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1929

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H.P. 1237

House of Representatives, May 11, 2023

### **An Act to Protect Consumers by Licensing Home Building Contractors**

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative ROBERTS of South Berwick.  
Cosponsored by President JACKSON of Aroostook and  
Representatives: FAY of Raymond, HASENFUS of Readfield, KESSLER of South Portland,  
LaROCHELLE of Augusta, MASTRACCIO of Sanford, ROEDER of Bangor, SAYRE of  
Kennebunk, Senator: BAILEY of York.

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§50** is enacted to read:

3 **50.**

4 Residential Construction Board Not Authorized 32 MRSA §18602

5 **Sec. 2. 10 MRSA c. 219-A**, as amended, is repealed.

6 **Sec. 3. 32 MRSA §14503, sub-§4**, as enacted by PL 1993, c. 444, §1, is amended  
7 to read:

8 **4. Home Residential construction contracts.** The laws governing ~~home residential~~  
9 construction contracts, Title 10, sections 1486 to 1490 section 18604.

10 **Sec. 4. 32 MRSA c. 149** is enacted to read:

11 **CHAPTER 149**

12 **RESIDENTIAL BUILDING CONTRACTORS**

13 **§18601. Definitions**

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

16 **1. Board.** "Board" means the Residential Construction Board established by this  
17 chapter.

18 **2. Contractor.** "Contractor" means a person that offers to contract or contracts for  
19 residential construction.

20 **3. Person.** "Person" means a natural person, corporation, limited liability company or  
21 any other business entity or association organized under the laws of this State or authorized  
22 to do business in this State.

23 **4. Residential construction.** "Residential construction" means the building,  
24 demolition or alteration of a residential dwelling unit or a building or premises with 4 or  
25 fewer residential dwelling units in this State and includes interior and exterior construction,  
26 renovation and repair; paving; roofing; weatherization; installation or repair of heating,  
27 plumbing, solar, electrical, water or wastewater systems; and other activities the board  
28 specifies by rule consistent with this chapter. "Residential construction" includes activities  
29 affecting the residential portion of a building or premises that have both residential and  
30 commercial components if the building or premises include 4 or fewer residential dwelling  
31 units.

32 **§18602. Residential Construction Board**

33 **1. Established.** The Residential Construction Board, as established under Title 5,  
34 section 12004-A, subsection 50, is established within the Department of Professional and  
35 Financial Regulation to carry out the purposes of this chapter.

36 **2. Membership.** The members of the board are as follows:

1 A. The Commissioner of Professional and Financial Regulation, who serves as chair  
2 of the board;

3 B. The State Fire Marshal or the fire marshal's designee;

4 C. The Director of the Efficiency Maine Trust or the director's designee; and

5 D. The following persons, appointed by the Governor:

6 (1) Four members who are contractors;

7 (2) One member of the public;

8 (3) Two municipal code enforcement officers;

9 (4) One attorney with experience in residential construction litigation;

10 (5) One representative from the Department of Education who oversees  
11 construction education programs at career and technical schools; and

12 (6) One representative from the University of Maine System who oversees career  
13 and technical education programs.

14 Appointed members serve at the pleasure of the Governor. Members serve without  
15 compensation.

16 **§18603. Licensure; exemptions; application; issuance**

17 **1. License required.** Except as provided in subsection 2, a person may not perform,  
18 offer to perform or agree to perform residential construction in exchange for consideration  
19 of more than \$7,500 without a license issued by the board.

20 **2. Exemptions from license requirement.** The following persons are exempt from  
21 the prohibition established in subsection 1:

22 A. Electricians licensed under chapter 17 when providing licensed services;

23 B. Plumbers licensed under chapter 49 when providing licensed services;

24 C. Architects licensed under chapter 3-A when providing licensed services;

25 D. Professional engineers licensed under chapter 19 when providing licensed services;

26 E. A person providing only design services for residential construction;

27 F. A person furnishing only materials for residential construction;

28 G. A person furnishing only painting services for residential construction;

29 H. A person furnishing only landscaping services for residential construction;

30 I. The State and any political subdivision of the State;

31 J. A school administrative unit, as defined in Title 20-A, section 1, subsection 26;

32 K. A consumer-owned water utility, as defined in Title 35-A, section 6101, subsection  
33 1-A;

34 L. A sewer district, as defined in Title 38, section 1032, subsection 3;

35 M. A sanitary district formed under Title 38, chapter 11;

36 N. A public or private school offering career and technical education or training in  
37 residential construction;

1 O. A person engaged in the delivery or installation of audiovisual equipment, telephone  
2 equipment or computer network equipment for residential construction; and

3 P. A person offering to perform or performing residential construction in response to  
4 an emergency, but only to the extent necessary to address the emergency.

5 **3. Application for license.** The board shall establish by rule the application process  
6 for a license under this chapter, including a reasonable initial licensing fee and a reasonable  
7 fee for the renewal of a license. An applicant for a license must provide:

8 A. The applicant's legal name and social security number or employer identification  
9 number, as appropriate;

10 B. If the applicant is an individual, any trade or business name used in the applicant's  
11 residential construction business;

12 C. If the applicant is an individual, any employer of the applicant that is engaged in  
13 residential construction;

14 D. The address of the applicant's principal place of business;

15 E. The mailing address of the applicant, if different from the address of the principal  
16 place of business;

17 F. If the applicant is an individual, the address of the applicant's primary residence;

18 G. If the applicant is a business entity, the legal name and address of each owner;

19 H. If there is any civil proceeding, judgment or award in which a claim was asserted,  
20 adjudicated or entered against the applicant, the jurisdiction or forum of the proceeding,  
21 judgment or award; the names of the parties to the proceeding, judgment or award; and  
22 the docket or case number associated with the proceeding, judgment or award;

23 I. Identification of any pending civil or criminal investigation of the applicant's  
24 residential construction business and the name of the investigating agency or officer;

25 J. Evidence that the applicant has general liability insurance in the amount of \$100,000  
26 in the aggregate;

27 K. Evidence of workers' compensation coverage for employees in accordance with  
28 Title 39-A;

29 L. Evidence that the applicant has satisfied the education requirements under  
30 subsection 4; and

31 M. Any other information the board determines to be necessary or useful in carrying  
32 out the purposes of this chapter.

33 **4. Education requirements.** A person may not be licensed under this chapter unless  
34 the person has satisfied education requirements established by the board by rule. The  
35 education requirements must include successful completion of a course of at least 6 hours  
36 of appropriate education and a passing score on an examination on the course subject  
37 matter.

38 **5. Denial.** The board in its discretion may deny an application for a license on the  
39 following grounds:

40 A. The applicant made material omissions or misrepresentations on the application;

- 1           B. The applicant failed to meet the requirements of subsection 3, paragraph J, K or L;
- 2           C. The applicant, without good cause, has failed to perform a contract governed by this
- 3           chapter, has performed a contract governed by this chapter in an unprofessional and
- 4           incompetent manner or has engaged in fraud or bad faith with respect to the offering
- 5           or performance of a contract governed by this chapter; or
- 6           D. The applicant has prior violations of this chapter.

7           **6. Expiration.** A license issued under this chapter expires at midnight on December  
8           31st of the year in which it is issued, except that a license issued during the last 3 months  
9           of the calendar year expires at midnight on December 31st of the following year. A licensee  
10           may renew a license by submitting an application and paying a renewal fee.

11           **7. Rules.** The board shall adopt rules to implement the requirements of this chapter.  
12           Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter  
13           375, subchapter 2-A including, notwithstanding Title 5, section 8071, subsection 3,  
14           paragraph B, rules to establish fees pursuant to subsection 3.

15           **§18604. Residential construction contracts**

16           **1. Written contract requirements.** An agreement for residential construction that  
17           exceeds \$7,500 in labor and materials must be in writing and must be signed by both the  
18           contractor and the customer prior to the commencement of construction. The agreement  
19           must also include the following:

- 20           A. The names, addresses and phone numbers of the contractor and the customer;
- 21           B. The location of the property where the residential construction will be performed;
- 22           C. The estimated date of commencement of work and the estimated date when the work
- 23           will be substantially completed, which may be changed if work cannot begin or end
- 24           due to circumstances beyond the control of the contractor, including, but not limited
- 25           to, the lack of readiness of the job site or the unavailability of building materials;
- 26           D. The total contract price, including all costs to be incurred in the proper performance
- 27           of the work, or, if the work is priced according to a so-called cost-plus formula, an
- 28           estimate of the cost of labor and materials and the agreed-upon formula to determine
- 29           the final price;
- 30           E. A general description of the services to be provided and materials to be used;
- 31           F. A provision stating that any change orders that result in changes to the price must
- 32           also be in writing and signed by both the contractor and the customer;
- 33           G. The license number of the contractor if required to be licensed under this chapter or
- 34           another law of this State;
- 35           H. A statement that the contractor has liability insurance coverage and that identifies
- 36           the type of policy, the insurer and coverage amounts;
- 37           I. The method of payment and, if payment is to be made according to a construction
- 38           schedule, the timing and amount of the payments. All finance charges must be
- 39           disclosed;

1 J. A statement that all work will be done in a skillful, diligent, professional and  
2 competent manner and, if the contractor provides any express warranty, the terms and  
3 conditions of that express warranty;

4 K. If the contract is being used for sales regulated by the consumer solicitation sales  
5 law, chapter 69, subchapter 5, or the home solicitation sales law, Title 9-A, Article 3,  
6 Part 5, a description of the consumer's rights to avoid the contract, as set forth in those  
7 laws;

8 L. As an addendum to the contract, a copy of the Attorney General's consumer  
9 protection information on home construction and repair, which includes information  
10 on contractors successfully sued by the State, as provided on the Attorney General's  
11 publicly accessible website; and

12 M. A clear and conspicuous notice that states that consumers are strongly advised to  
13 visit the Attorney General's publicly accessible website to gather current information  
14 on how to enforce their rights when constructing or repairing their homes, as well as  
15 the Attorney General's publicly accessible website address and telephone number.

16 **2. Prohibited provisions.** In any agreement for residential construction that exceeds  
17 \$7,500 in labor and materials, the following provisions are prohibited:

18 A. Waiver of any requirement of this chapter;

19 B. A requirement that a customer pay more than 1/3 of the total contract price prior to  
20 the commencement of work; and

21 C. A requirement that a customer pay more than 85% of the total contract price prior  
22 to substantial completion of work.

### 23 **§18605. Penalties and remedies**

24 **1. Criminal penalty.** A person required to obtain a license under this chapter that  
25 knowingly or willfully fails to obtain a license commits a Class E crime.

26 **2. Unfair trade practice.** A violation of this chapter constitutes an unfair trade practice  
27 prohibited under Title 5, section 207.

28 **3. Civil penalty.** An intentional violation of this chapter is a civil violation for which  
29 a civil penalty of not more than \$10,000 must be imposed.

30 Any person that in the course of offering to perform or performing residential construction  
31 makes a misrepresentation of that person's license status under this chapter commits a civil  
32 violation for which a civil penalty of not more than \$10,000 may be imposed.

33 **4. Limitation on other rights.** A person required to obtain a license under this chapter  
34 that does not obtain a license does not have a lien claim under Title 10, chapter 603 for any  
35 residential construction performed during the period in which the person was not licensed.

## 36 **SUMMARY**

37 This bill establishes licensing requirements for contractors that perform work on  
38 residential construction. It establishes a board to administer the licensing requirements. It  
39 also reallocates from the law governing regulation of trade to the law governing professions  
40 and occupations the law establishing requirements for residential construction contracts  
41 and modifies that law in various ways. The bill establishes certain penalties for violations.