

## **An Act to Protect Consumers in Prepaid Home Construction and Repair Contracts**

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

**Sec. 1. 9-A MRSA Article 13** is enacted to read as follows:

### **§13-101. Short Title**

This article shall be known as the "Prepaid Home Construction and Repair Consumer Protection Act."

### **§13-102 Definitions**

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

- 1) "Administrator" means the Superintendent of the Bureau of Consumer Credit Protection.
- 2) "Bona fide 3rd-party costs" mean verifiable payments made to 3rd parties for construction materials or building permits.
- 3) "Completion of all services" means performance of all contracted-for construction and repairs in a workmanlike and reasonably skilled manner.
- 4) "Consumer" means a natural person who enters into a contract for residential home construction or repair. The term does not include a person who enters into a contract for construction or repair of an investment or commercial property.
- 5) "Prepaid Contractor" means a person who regularly performs home construction or repair services, and who accepts funds from a consumer for home construction or repair prior to completion of all services. A person regularly performs home construction or repair services if the person provided services subject to the requirements for a written contract pursuant to the Maine Home Construction Contracts Act, 10 MRSA § 1486 *et seq.*, two or more times in the preceding calendar year. If the person did not meet these standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.
- 6) "Person" means a natural person or an individual, and an organization.

### **§13-103 Registration and bonding**

*DRAFT – Does not represent Administration or Department Position  
Proposal From the Acting Superintendent of the Bureau of Consumer Protection*

1) Any prepaid contractor must register with the administrator on or before January 31st of each year, on a registration form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. The application must include a fee of \$40. Such fees are appropriated for the use of the administrator, and any balance of such funds shall not lapse but shall be carried forward to be expended for the same purpose in the following fiscal year.

2) Each application must be accompanied by evidence of a surety bond, in a form approved by the administrator in the aggregate amount of \$5,000, to run to the State for use by the State and any consumer who may have a cause of action against the prepaid contractor. The terms of the bond may be continuous, but at a minimum must run for the entire period during which the registration is in effect. If a surety bond is not practicably available, the administrator, in the administrator's discretion, may permit an alternative to bonding that provides equivalent consumer protection, including an irrevocable letter of credit.

**§13-104 Escrow of funds**

Each prepaid contractor shall place funds from a consumer, other than bona fide 3rd-party costs, in an escrow account separate from any operating accounts of the prepaid contractor. The funds must remain in the escrow account until completion of all services.

**§13-105 Compliance examinations**

The administrator may conduct compliance examinations and investigations pursuant to § 6-106 of this title.

**§13-106 Authority of the Administrator**

The administrator may:

A. Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter, or refer cases to the Attorney General, who shall appear for and represent the administrator in court; and

B. Adopt, amend and repeal rules to carry out the specific provisions of this chapter. Rules promulgated pursuant to this subsection shall be routine technical rules.

**§13-107 Enforcement**

The administrator may enforce the provision of this chapter pursuant to the provisions of §§ 6-107 – 6-115 of this title.

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**§13-108 Relation to other laws.**

The provisions of the Home Construction Contract Act, 10 MRSA chapter 219-A, and the Unfair Trade Practices Act, 5 MRSA Chapter 10, shall supplement the provisions of this article.

**Sec. 2. Effective date.** This Act shall take effect January 1, 2009.

**SUMMARY**

This bill protects consumers by requiring any home construction and repair contractor who accepts funds from a consumer before services are complete, to register annually with the State and to post a consumer protection surety bond. The bill requires that all construction or repairs be completed in a workmanlike and reasonably skilled manner. The bill enables the State to act on consumer complaints and to conduct routine or investigative compliance examinations.

**FISCAL NOTE**

Two staff persons, including one advanced clerical to provide registration and computer support; and one experienced examiner/inspector to receive consumer complaints, investigate those complaints and ensure compliance with this article; as well as a 25% portion of one Assistant Attorney General, to negotiate settlements against violators and, if necessary, to represent the administrator in court.