



128th MAINE LEGISLATURE

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Legislative Document

No. 1529

S.P. 535

In Senate, April 25, 2017

An Act To Protect Consumers during Residential Construction

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

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator LANGLEY of Hancock.
Cosponsored by Senators: CUSHING of Penobscot, CYRWAY of Kennebec, WHITTEMORE of Somerset, Representative: MASON of Lisbon.

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

2 **Sec. 1. 10 MRSA §1486, sub-§1-A** is enacted to read:

3 **1-A. Depository institution.** "Depository institution" means:

4 A. A bank; or

5 B. A savings institution, trust company, credit union or similar institution that is
6 organized or chartered under the laws of a state or of the United States, authorized to
7 receive deposits and supervised and examined by an official or agency of a state or
8 the United States if its deposits or share accounts are insured to the maximum amount
9 authorized by statute by the Federal Deposit Insurance Corporation, the National
10 Credit Union Share Insurance Fund or a successor authorized by federal law.

11 "Depository institution" does not include an insurance company or other organization
12 primarily engaged in the business of insurance or an industrial loan company.

13 **Sec. 2. 10 MRSA §1487, first ¶,** as amended by PL 2003, c. 85, §1, is further
14 amended to read:

15 Any home construction contract for more than ~~\$3,000~~ \$5,000 in materials or labor
16 must be in writing and must be signed by both the home construction contractor and the
17 homeowner or lessee. Both the contractor and the homeowner or lessee must receive a
18 copy of the executed contract prior to any work performance. This basic contract must
19 contain the entire agreement between the homeowner or lessee and the home construction
20 contractor and must contain at least the following parts:

21 **Sec. 3. 10 MRSA §§1487-A and 1487-B** are enacted to read:

22 **§1487-A. Misapplication of home construction contract funds**

23 A person who intentionally, knowingly or recklessly violates the requirements of this
24 section commits the crime of misapplication of home construction contract funds and is
25 subject to penalties set out in section 1490.

26 **1. Business account.** A home construction contractor shall deposit funds received
27 from a homeowner or lessee for a home construction contract into a business account in a
28 depository institution. The business account must be separate from any account for
29 personal use. A home construction contractor is not required to keep the funds of
30 different homeowners or lessees in separate depository accounts.

31 **2. Misapplication of funds.** A home construction contractor may not misapply
32 home construction contract funds by expending or transferring funds from the business
33 account under subsection 1 for any uses other than those directly associated with the
34 performance of the home construction contract. A home construction contractor may
35 transfer or expense funds from that account or contract profits to compensate the
36 contractor for labor after the substantial completion of the labor or the performance under
37 the contract.

1 **§1487-B. Escrow requirements following criminal conviction**

2 A home construction contractor who has been convicted of misapplication of home
3 construction funds pursuant to section 1487-A, home repair fraud under Title 17-A,
4 section 908 or any similar crime in another jurisdiction involving circumstances related to
5 a home construction contract shall comply with this section.

6 **1. Escrow.** Except as provided in subsection 2, a home construction contractor with
7 a criminal conviction subject to this section shall, within 5 business days, deposit into an
8 escrow account in a depository institution payments received from a homeowner or lessee
9 prior to substantial completion of a home construction contract. No later than 10 business
10 days after the deposit has been made, the contractor shall advise the homeowner or lessee
11 party to the contract in writing of the name of the depository institution where the funds
12 have been placed.

13 The home construction contractor may not withdraw deposits from the escrow account in
14 excess of payments bearing a reasonable relationship to the amount of work performed,
15 materials purchased or expenses for which the contractor is obligated on behalf of the
16 homeowner or lessee. The contractor is not required to keep the funds of different
17 homeowners or lessees in separate depository accounts, as long as the contractor's books
18 of account clearly show the allocation of the funds to each homeowner or lessee and
19 tracks their expenditure.

20 This subsection does not require a home construction contractor's depository institution to
21 inquire into the validity or propriety of any deposits to or withdrawals from any escrow
22 account established pursuant to this section.

23 **2. Surety bond; contract of indemnity; irrevocable letter of credit.** In lieu of
24 making a deposit into an escrow account pursuant to subsection 1, a home construction
25 contractor may post with the homeowner or lessee a bond or contract of indemnity, issued
26 by a surety company licensed to execute such an instrument in this State, or an
27 irrevocable letter of credit issued by a depository institution located in this State,
28 guaranteeing the return of the payments, or the proper application of the payments to the
29 purpose of the contract, in which case the contractor is not required to deposit such
30 payments into an escrow account. The bond or contract of indemnity or irrevocable letter
31 of credit must be delivered to the homeowner or lessee within 10 business days after the
32 home construction contractor's receipt of the payment.

33 **3. Duration.** A deposit into an escrow account pursuant to subsection 1 remains the
34 property of the homeowner or lessee and a surety bond, contract of indemnity or
35 irrevocable letter of credit posted or issued pursuant to subsection 2 continues in effect
36 until the occurrence of one of the following:

37 A. The proper payment, transfer or application of the deposit by the contractor to the
38 purposes of the home construction contract; or

39 B. The substantial completion of work under the contract.

40 **Sec. 4. 10 MRSA §1489**, as enacted by PL 1987, c. 574, is repealed.

1 A person who violates these requirements and causes a homeowner or lessee to suffer a
2 financial loss that is more than \$1,000 but not more than \$10,000 commits a Class D
3 crime and commits a Class C crime when that financial loss is more than \$10,000.