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Date: (Filing No. S-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 535, L.D. 1529, Bill, “An Act To Protect Consumers during Residential Construction”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 17-A MRS §908, as amended by PL 2007, c. 475, §12 and c. 476, §§34 to 38, is further amended to read:

§908. Home construction or repair fraud

1. A home construction or repair seller is guilty of home construction or repair fraud if the seller knowingly enters into an agreement or contract, written or oral, with any person for home construction or repair services and the seller, at the time of entering into that agreement or contract:

A. Intentionally misrepresents a material fact relating to the terms of the agreement or contract or misrepresents a preexisting or existing condition of any portion of the property that is the subject of the home construction or repair services. Violation of this paragraph is a Class D crime;

B. Intentionally creates or reinforces an impression relating to the terms of the agreement or contract that is false and that the seller does not believe to be true or fails to correct such an impression that the seller had previously created or reinforced. Violation of this paragraph is a Class D crime;

C. Intentionally promises performance under the terms of the agreement or contract that the seller does not intend to perform or that the seller knows will not be performed. Violation of this paragraph is a Class D crime;

D. Intentionally uses or employs deception, false pretense or false promise in securing the agreement or contract. Violation of this paragraph is a Class D crime;

E. Knows that the property that is the subject of the home construction or repair services was previously damaged or destroyed by the seller with the intent to obtain the agreement or contract. Violation of this paragraph is a Class D crime;

COMMITTEE AMENDMENT

1 F. Violates paragraph A and the person has 2 or more prior convictions under this
2 section or for engaging in substantially similar conduct to that contained in this
3 section in another jurisdiction. Section 9-A governs the use of prior convictions
4 when determining a sentence. Violation of this paragraph is a Class C crime;

5 G. Violates paragraph B and the person has 2 or more prior convictions under this
6 section or for engaging in substantially similar conduct to that contained in this
7 section in another jurisdiction. Section 9-A governs the use of prior convictions
8 when determining a sentence. Violation of this paragraph is a Class C crime;

9 H. Violates paragraph C and the person has 2 or more prior convictions under this
10 section or for engaging in substantially similar conduct to that contained in this
11 section in another jurisdiction. Section 9-A governs the use of prior convictions
12 when determining a sentence. Violation of this paragraph is a Class C crime;

13 I. Violates paragraph D and the person has 2 or more prior convictions under this
14 section or for engaging in substantially similar conduct to that contained in this
15 section in another jurisdiction. Section 9-A governs the use of prior convictions
16 when determining a sentence. Violation of this paragraph is a Class C crime; or

17 J. Violates paragraph E and the person has 2 or more prior convictions under this
18 section or for engaging in substantially similar conduct to that contained in this
19 section in another jurisdiction. Section 9-A governs the use of prior convictions
20 when determining a sentence. Violation of this paragraph is a Class C crime.

21 **3.** As used in this section, unless otherwise indicated, the following terms have the
22 following meanings.

23 A. "Home construction or repair services" means building or constructing a
24 residence and fixing, replacing, altering, converting, modernizing, improving or
25 making an addition to real property primarily designed or used as a residence.
26 "Home construction or repair services" includes not only structural work but also the
27 construction, installation, replacement, improvement and cleaning of driveways,
28 swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences,
29 fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water
30 heaters, electric wiring, sewers, carpeting, plumbing fixtures, storm doors, storm
31 windows, siding or awnings and other improvements to structures within the
32 residence or upon the land adjacent to the residence, including tree trimming.

33 B. "Home construction or repair seller" or "seller" means a person, partnership,
34 corporation, business, trust or other legal entity that sells or provides home
35 construction or repair services.

36 C. "Residence" means a single-family or multifamily dwelling, including a single-
37 family home, apartment building, condominium, duplex or townhouse that is used or
38 intended to be used by its occupants as a dwelling place.'

39 **SUMMARY**

40 This amendment, which is the unanimous report of the committee, strikes and
41 replaces the bill. The amendment expands the crime of home repair fraud to include
42 fraud that occurs in connection with initial construction of a residence.