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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.

HEATHER J.R. PRIEST Secretary of the Senate

Heath & Buil

Presented by Senator LANGLEY of Hancock.

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

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 6 7 8 9 10	B. A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law.
11 12	"Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance or an industrial loan company.
13 14	Sec. 2. 10 MRSA §1487, first \P , as amended by PL 2003, c. 85, §1, is further amended to read:
15 16 17 18 19 20	Any home construction contract for more than \$3,000 \$5,000 in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. Both the contractor and the homeowner or lessee must receive a copy of the executed contract prior to any work performance. This basic contract must contain the entire agreement between the homeowner or lessee and the home construction 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 24 25	A person who intentionally, knowingly or recklessly violates the requirements of this section commits the crime of misapplication of home construction contract funds and is subject to penalties set out in section 1490.
26 27 28 29 30	1. Business account. A home construction contractor shall deposit funds received from a homeowner or lessee for a home construction contract into a business account in a depository institution. The business account must be separate from any account for personal use. A home construction contractor is not required to keep the funds of different homeowners or lessees in separate depository accounts.
31 32 33 34 35 36 37	2. Misapplication of funds. A home construction contractor may not misapply home construction contract funds by expending or transferring funds from the business account under subsection 1 for any uses other than those directly associated with the performance of the home construction contract. A home construction contractor may transfer or expense funds from that account or contract profits to compensate the contractor for labor after the substantial completion of the labor or the performance under the contract.

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

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§1487-B. Escrow requirements following criminal conviction

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

- 1. Escrow. Except as provided in subsection 2, a home construction contractor with a criminal conviction subject to this section shall, within 5 business days, deposit into an escrow account in a depository institution payments received from a homeowner or lessee prior to substantial completion of a home construction contract. No later than 10 business days after the deposit has been made, the contractor shall advise the homeowner or lessee party to the contract in writing of the name of the depository institution where the funds have been placed.
- The home construction contractor may not withdraw deposits from the escrow account in excess of payments bearing a reasonable relationship to the amount of work performed, materials purchased or expenses for which the contractor is obligated on behalf of the homeowner or lessee. The contractor is not required to keep the funds of different homeowners or lessees in separate depository accounts, as long as the contractor's books of account clearly show the allocation of the funds to each homeowner or lessee and tracks their expenditure.
 - This subsection does not require a home construction contractor's depository institution to inquire into the validity or propriety of any deposits to or withdrawals from any escrow account established pursuant to this section.
 - 2. Surety bond; contract of indemnity; irrevocable letter of credit. In lieu of making a deposit into an escrow account pursuant to subsection 1, a home construction contractor may post with the homeowner or lessee a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this State, or an irrevocable letter of credit issued by a depository institution located in this State, guaranteeing the return of the payments, or the proper application of the payments to the purpose of the contract, in which case the contractor is not required to deposit such payments into an escrow account. The bond or contract of indemnity or irrevocable letter of credit must be delivered to the homeowner or lessee within 10 business days after the home construction contractor's receipt of the payment.
 - **3. Duration.** A deposit into an escrow account pursuant to subsection 1 remains the property of the homeowner or lessee and a surety bond, contract of indemnity or irrevocable letter of credit posted or issued pursuant to subsection 2 continues in effect until the occurrence of one of the following:
 - A. The proper payment, transfer or application of the deposit by the contractor to the purposes of the home construction contract; or
- B. The substantial completion of work under the contract.
- **Sec. 4. 10 MRSA §1489,** as enacted by PL 1987, c. 574, is repealed.

1 2	Sec. 5. 10 MRSA §1490, sub-§2, as enacted by PL 1987, c. 574, is amended to read:
3 4 5 6 7 8 9	2. Civil penalty. Each Except as provided in subsection 3, a violation of this chapter constitutes a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. No An action may not be brought for a civil violation under this subsection more than 2 years after the date of the occurrence of the violation. No A home construction contractor may not be held liable for a civil violation under this subsection if the contractor shows by a preponderance of the evidence that the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.
11	Sec. 6. 10 MRSA §1490, sub-§3 is enacted to read:
12	3. Crime. The following violations of this chapter are crimes.
13 14	A. A person who intentionally, knowingly or recklessly violates section 1487-A commits a Class E crime.
15	B. A person who intentionally, knowingly or recklessly violates section 1487-B and:
16 17	(1) Causes a homeowner or lessee to suffer a financial loss that is more than \$1,000 but not more than \$10,000 commits a Class D crime; or
18 19	(2) Causes a homeowner or lessee to suffer a financial loss that is more than \$10,000 commits a Class C crime.
20	SUMMARY
21 22	This bill amends the laws governing home construction contracts in the following ways.
23 24	1. It increases the threshold upon which a written home construction contract is required from \$3,000 to \$5,000.
25 26 27	2. It repeals the provision in current law that allows homeowners or lessees and home construction contractors to exempt themselves from the home construction contract requirements by mutual consent.
28 29 30 31 32 33	3. It requires a home construction contractor to deposit funds received from a home construction contract into a business account that is separate from any account used for personal use by the contractor. A home construction contractor who violates this requirement commits a misapplication of home construction funds, a new Class E crime established by the bill, which also subjects the contractor to the escrow requirements established by the bill and a fine of not less than \$100 nor more than \$1,000.
34 35	4. If a home construction contractor has been convicted of misapplication of home construction funds or home repair fraud in the State, or any similar crime in another

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37 38 jurisdiction, the bill requires the contractor to put funds received in an escrow account or

obtain an indemnity contract or surety bond. A person who violates these requirements is subject to a civil violation that carries a fine of not less than \$100 nor more than \$1,000.

- 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.