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An Act To Require Registration by Residential Construction Contractors

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

Sec. 1. 32 MRSA c. 134 is enacted to read:

CHAPTER 134

RESIDENTIAL CONSTRUCTION CONTRACTOR REGISTRATION ACT

§ 15301. Short title

This chapter may be known and cited as "the Residential Construction Contractor Registration Act."

§ 15302. Definitions

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

- 1. Department.** "Department" means the Department of Professional and Financial Regulation.
- 2. Person.** "Person" means any natural person, corporation, partnership or other business entity.
- 3. Registrant.** "Registrant" means a person who applies to be or is registered under this chapter.
- 4. Residential construction contractor.** "Residential construction contractor" means a person who:
 - A. Undertakes, offers to undertake or submits a bid to build, alter or repair a residential structure;
 - B. For compensation, and with or without the intent to sell a residential structure, arranges to build, alter or repair a residential structure; or
 - C. Purchases or owns property and, for compensation, builds or arranges for the building of one or more residential structures on that property.

For purposes of this subsection, "build, alter or repair" includes roofing work and window replacement.

5. Residential construction contracts. "Residential construction contracts" does not include contracts with subcontractors or suppliers of materials or services.

6. Residential structure. "Residential structure" means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter.

§ 15303. Scope

This chapter applies only to residential construction contractors who enter into residential construction contracts totaling more than \$10,000 in the aggregate in a calendar year.

§ 15304. Exemptions

The following persons are exempt from this chapter:

1. Architects and engineers. Architects and professional engineers licensed under chapters 3-A and 19, respectively;

2. Oil and solid fuel technicians; propane and natural gas technicians. Oil and solid fuel technicians and propane and natural gas technicians licensed under chapters 33 and 130, respectively;

3. Manufactured housing licensees. Manufacturers and dealers of manufactured housing licensed under Title 10, chapter 951; and

4. Electricians and plumbers. Electricians and plumbers licensed under chapters 17 and 49, respectively.

§ 15305. Registration required

A person shall register with the department in the manner described in this chapter before acting as a residential construction contractor. A person may not act as a residential construction contractor in the absence of a current, valid registration.

§ 15306. Registration process

The following provisions govern the registration process for residential construction contractors.

1. Electronic format. The entire registration process must be conducted electronically via the Internet. This includes but is not limited to application, renewal and payment by the registrant; all correspondence and notices relating to registration; and issuance of registration.

2. Application. The department shall prescribe the form of electronic applications. The registrant shall supply the following information and shall certify that all information provided is true, accurate and complete:

A. The name, physical address, postal address and telephone number of the registrant;

B. If the registrant is an individual, the registrant's social security number and date of birth;

C. If the registrant is an entity other than an individual, the registrant's employer identification number and the name of the individual authorized to file the application on behalf of the registrant;

D. The registrant's electronic mail address;

E. The uniform resource locator of any business-related website maintained by or for the benefit of the registrant;

F. Information for the 10-year period immediately preceding application relating to any criminal convictions, guilty pleas or no contest pleas of the registrant or any officer, director or general partner of the registrant, including convictions, guilty pleas or no contest pleas in a military court;

G. Information for the 10-year period immediately preceding application relating to any criminal convictions, guilty pleas or no contest pleas of the registrant or any officer, director or general partner of the registrant relating to fraud, false statement or omission, wrongful taking of property, bribery or perjury or conspiracy to commit any of these crimes, including any such convictions, guilty pleas or no contest pleas in a military court;

H. Information for the 10-year period immediately preceding application relating to any bankruptcy petitions filed by or against the registrant, any business with which the registrant was associated or any officer, director or general partner of the registrant;

I. Information relating to any outstanding judgments or liens against the registrant, any business with which the registrant was associated or any officer, director or general partner of the registrant;

J. Information relating to any customer complaints, arbitration proceedings, judicial proceedings, disciplinary proceedings or license nonrenewal proceedings that are pending or that have been brought in the last 10 years against the registrant, any business with which the registrant was associated or any officer, director or general partner of the registrant;

K. A description of the business structure of the registrant;

L. If the registrant is a corporation or limited liability company, the date and state of incorporation and the names, physical addresses, postal addresses and telephone numbers of individuals with the authority to bind the organization;

M. If the registrant is a partnership or limited liability partnership, the state where the partnership agreement is filed;

N. The number of persons employed by the registrant;

O. Information relating to workers' compensation insurance purchased by the registrant; and

P. Information relating to employees leased by the registrant.

3. Public posting of applications. The department shall post completed applications on a publicly accessible website.

4. Criminal history record check. The department shall request a criminal history record check pursuant to Title 25, section 1541, subsection 6 upon receipt of an application from any individual registrant who has not previously registered under this chapter. The department may, in its discretion, request a criminal history record check upon receipt of a subsequent application or with respect to a registrant other than an individual or an officer, director or general partner of any such registrant. The cost of a criminal history record check requested pursuant to this subsection must be paid by the registrant.

5. Registration term; renewal. All registrations issued pursuant to this chapter expire on January 31st of each year. A registrant may apply for renewal of the registration by providing the information described in subsection 2.

§ 15307. Change of electronic mail address; communication via electronic mail

A registrant shall immediately notify the department of any change of electronic mail address.

§ 15308. Written contract and change order

Residential construction contractors shall use a written contract and change order that contains the contract provisions specified in Title 10, section 1487 when they enter into residential construction contracts.

§ 15309. Complaints

The following provisions govern complaints concerning residential construction contractors.

1. Electronic complaint process. The department shall establish and maintain a mechanism for the electronic filing, processing and public posting of complaints against residential construction contractors via the Internet as described in this section.

2. Complaint and response. A complaint filed electronically under subsection 1 must be forwarded to the relevant registrant via electronic mail with a request that the registrant electronically submit a response within 30 days of the date of mailing.

3. Public posting of complaint and response. Upon expiration of the 30-day response period under subsection 2, the department shall post the complaint on a publicly accessible website along with the registrant's response or, if no response was timely submitted, a notation to that effect. The department, in its sole discretion, may remove extraneous or scandalous matter or inappropriate language from the complaint and response, if any, and may paraphrase complaints and responses.

4. Finality of posting. Notwithstanding Title 5, sections 10003 and 10005, the posting of a complaint and response by the department pursuant to subsection 3 is not subject to the requirements of Title 5, chapter 375, subchapters 4 and 6, and no hearing by the department or in District Court is required.

§ 15310. Penalties

The following provisions govern penalties for residential construction contractors.

1. Failure to register. A person that acts as a residential construction contractor subject to this chapter without registering as a residential construction contractor pursuant to this chapter commits a Class D crime. Failure to register constitutes an unfair trade practice under Title 5, chapter 10.

2. Expired registration. A residential construction contractor subject to this chapter that engages in any activity under this chapter without a current, valid registration commits a Class D crime. Unregistered practice subsequent to initial registration constitutes an unfair trade practice under Title 5, chapter 10.

3. Failure to use written contract. A residential construction contractor subject to this chapter that fails to use a written contract and change order that contains the specific contract provisions of Title 10, section 1487 commits a civil violation for which a fine of no less than \$1,000 and no more than \$10,000 may be adjudged per occurrence. Failure to use a written contract and change order constitutes an unfair trade practice under Title 5, chapter 10.

4. False information. A person that submits false information to the department in the course of applying for or renewing a registration pursuant to this chapter commits a Class D crime. The submission of false information in the registration process constitutes an unfair trade practice under Title 5, chapter 10.

§ 15311. Fees

The following provisions govern fees.

1. Registration and renewal fee. A registration fee of \$100 must be paid by a registrant in an electronic format acceptable to the department upon application under section 15306. A separate registration fee must be paid for each annual registration period.

2. Complaint or other information filing fee. A fee of \$10 must be paid by consumers in an electronic format acceptable to the department for each complaint filing under section 15309 regarding a residential construction contractor made with the department.

SUMMARY

This bill requires residential construction contractors to register with the Department of Professional and Financial Regulation to provide consumers with access to relevant financial and business information regarding registered contractors, requires use of a model contract and change order contract and provides for a public complaint process that would be conducted electronically over the Internet.