

HOUSE BILL 82

Unofficial Copy
C2

2001 Regular Session
11r0048

(PRE-FILED)

By: **Chairman, Economic Matters Committee (Departmental - Labor,
Licensing and Regulation)**
Requested: October 26, 2000
Introduced and read first time: January 10, 2001
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 6, 2001

CHAPTER _____

1 AN ACT concerning

2 **Home Builders - Surety Bonds, Letters of Credit, and Warranty Plans**
3 **Regulation**

4 FOR the purpose of transferring certain responsibilities concerning surety bonds,
5 letters of credit, and third party warranty plans from the Department of Labor,
6 Licensing, and Regulation to the Consumer Protection Division of the Office of
7 the Attorney General; clarifying certain disclosure requirements; exempting
8 builders of custom homes from certain disclosure requirements; correcting an
9 oversight in the State Home Builder Registration Act; and generally relating to
10 home builders.

11 BY repealing and reenacting, with amendments,
12 Article - Business Regulation
13 Section 4.5-203
14 Annotated Code of Maryland
15 (1998 Replacement Volume and 2000 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - Real Property
18 Section 10-302, 10-303, 10-303.1, 10-601, 10-602, 10-603, 10-604, 10-606,
19 and 10-607
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 2000 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Business Regulation**

4 4.5-203.

5 (a) (1) There is a Home Builder Registration Fund.

6 (2) The Division shall administer the Registration Fund.

7 (3) The Registration Fund shall be used to cover the actual documented
8 direct and indirect costs incurred for the administration and enforcement of the
9 Maryland Home Builders Registration Act.

10 (4) The Registration Fund is a continuing, nonlapsing fund, and is
11 subject to § 7-302 of the State Finance and Procurement Article.

12 (5) Unspent assets of the Registration Fund shall remain in the
13 Registration Fund and may not revert or be transferred to the General Fund of the
14 State.

15 (6) The Registration Fund may not be supported by appropriations of
16 State funds.

17 (b) (1) By regulation, the Division shall establish reasonable fees that may
18 not exceed \$600 over a 2-year period, and a fee schedule for the issuance and renewal
19 of registrations.

20 (2) The fees charged shall approximate the direct and indirect costs of
21 administering and enforcing the Maryland Home Builders Registration Act AND
22 TITLE 10, SUBTITLE 3, SUBTITLE 5, AND SUBTITLE 6 OF THE REAL PROPERTY
23 ARTICLE.

24 (c) The Division shall pay all funds collected under § 4.5-303 of this title to
25 the Comptroller, who shall distribute the fees to the Registration Fund.

26 (d) The Office of Legislative Audits shall audit the accounts and transactions
27 of the Registration Fund under § 2-1220 of the State Government Article.

28 **Article - Real Property**

29 10-302.

30 (a) The bond shall be payable to the State for the use and benefit of every
31 person protected by the provisions of this subtitle. The vendor or purchaser shall
32 deposit the bond with the [Department of Labor, Licensing, and Regulation]
33 CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL.

(b) The corporate surety bond obtained pursuant to the provisions of § 10-301(a) shall be in a form approved by the [Department of Labor, Licensing, and Regulation] CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL. The bond may be either in the form of an individual bond for each deposit accepted by a vendor or builder or if the total amount of money and deposits accepted by the builder or vendor exceeds \$10,000, it may be in the form of a blanket bond assuring the return of the deposits received by the vendor or builder.

(c) If the bond is a blanket bond, the penalty of the bond shall be in accordance with the following schedule:

Total Amount of Deposits Held	Penalty of Bond
(1) \$10,000 to \$75,000	Full amount of deposit held
(2) \$75,000 to \$200,000	\$75,000
(3) \$200,000 to \$500,000	\$200,000
(4) Over \$500,000	\$500,000

(d) For the purpose of determining the penalty of any blanket bond which the vendor or builder maintains in any calendar year, the total amount of deposits considered held by a vendor or builder shall be determined as of May 31 of any given calendar year and the penalty of the bond shall be in accordance with the amount of deposits held as of May 31.

10-303.

(a) An irrevocable letter of credit obtained under § 10-301 of this subtitle shall be:

(1) Payable to the [Department of Labor, Licensing, and Regulation] OFFICE OF THE ATTORNEY GENERAL for the use and benefit of every person protected by the provisions of this subtitle; and

(2) In a form approved by the [Department] CONSUMER PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL.

(b) An irrevocable letter of credit may be either in the form of an individual letter of credit for each deposit accepted by a vendor or builder or if the total amount of money and deposits accepted by the builder exceeds \$10,000, the letter of credit may be in the form of a blanket letter of credit assuring the return of the deposits received by the vendor or builder.

(c) If the letter of credit is a blanket letter of credit, the amount of the letter of credit shall be in accordance with the following schedule:

Total Amount of Deposits Held	Amount of Letter of Credit
(1) \$10,000 to \$75,000	Full amount of deposit held
(2) \$75,000 to \$200,000	\$75,000
(3) \$200,000 to \$500,000	\$200,000
(4) Over \$500,000	\$500,000

(d) For the purpose of determining the amount of any blanket letter of credit which the vendor or builder maintains in any calendar year, the total amount of deposits considered held by a vendor or builder shall be determined as of May 31 of any given calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

10-303.1.

The [Department of Labor, Licensing, and Regulation] CONSUMER

49 PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL shall adopt
50 regulations for the administration of the provisions of this subtitle relating to bonds
51 and letters of credit.

52 10-601.

53 (a) In this subtitle the following words have the meanings indicated.

54 (b) "Appliances, fixtures, and items of equipment" means furnaces, boilers, oil
55 tanks and fittings, air purifiers, air handling equipment, ventilating fans, air
56 conditioning equipment, water heaters, pumps, stoves, refrigerators, garbage
57 disposals, compactors, dishwashers, automatic door openers, washers and dryers,
58 bathtubs, sinks, toilets, faucets and fittings, lighting fixtures, circuit breakers, and
59 other similar items.

60 (c) "Builder" means any person, corporation, partnership or other legal entity:

61 (1) That is engaged in the business of erecting or otherwise constructing
62 a new home; or

63 (2) That purchases a completed new home for resale in the course of its
64 business.

65 (d) ["Department" means the Department of Labor, Licensing, and
66 Regulation.] "DIVISION" MEANS THE CONSUMER PROTECTION DIVISION OF THE
67 OFFICE OF THE ATTORNEY GENERAL.

68 (e) "Electrical systems" means all wiring, electrical boxes, switches, outlets
69 and connections up to the public utility connection.

70 (f) "Heating, cooling, and ventilating systems" means all duct work, steam,
71 water and refrigerant lines, registers, convectors, radiation elements and dampers.

1 (g) "Load-bearing portions of the home" means the load-bearing portions of
2 the:

3 (1) Foundation system and footings;

4 (2) Beams;

5 (3) Girders;

6 (4) Lintels;

7 (5) Columns;

8 (6) Walls and partitions;

9 (7) Floor systems; and

10 (8) Roof framing system.

11 (h) "Local jurisdiction" means any county and any municipal corporation in
12 Maryland subject to the provisions of Article XI-E of the Constitution.

13 (i) (1) "New home" means every newly constructed private dwelling unit in
14 the State and the fixtures and structure that are made a part of a newly constructed
15 private dwelling unit at the time of construction.

16 (2) "New home" does not include:

17 (i) Outbuildings, including detached garages and detached
18 carports, except outbuildings that contain plumbing, electrical, heating, cooling, or
19 ventilation systems serving the new home;

20 (ii) Driveways;

21 (iii) Walkways;

22 (iv) Patios and decks;

23 (v) Boundary walls;

24 (vi) Retaining walls not necessary for the structural stability of the
25 new home;

26 (vii) Landscaping;

27 (viii) Fences;

28 (ix) Off-site improvements;

29 (x) Appurtenant recreational facilities; and

30 (xi) Other similar items as determined by the Secretary.

1 (j) "New home warranty" means a series of written promises made by a
2 builder that meets the requirements of this subtitle.

3 (k) "New home warranty security plan" means a plan that meets the
4 requirements of § 10-606 of this title.

5 (l) "Owner" means the purchaser of a new home who uses the home primarily
6 for residential purposes during the warranty period.

7 (m) "Plumbing systems" means:

8 (1) Gas supply lines and fittings;

9 (2) Water supply, waste, and vent pipes and their fittings;

10 (3) Septic tanks and their drain fields; and

11 (4) (i) Water, gas, and sewer service piping and their extensions to the
12 tie-in of a public utility connection; or

13 (ii) On-site wells and sewage disposal systems.

14 (n) ["Secretary" means the Secretary of Labor, Licensing, and Regulation or
15 the Secretary's designee.

16 (o)] (1) "Structural defect" means any defect in the load-bearing portions of a
17 new home that adversely affects its load-bearing function to the extent that the home
18 becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise
19 uninhabitable.

20 (2) "Structural defect" includes damage due to subsidence, expansion, or
21 lateral movement of soil that has been located or relocated by the builder.

22 (3) "Structural defect" does not include damage caused by movement of
23 the soil:

24 (i) Resulting from a flood or earthquake; or

25 (ii) For which compensation has been provided.

26 [(p)] (O) "Warranty date" means the first day that the owner occupies the new
27 home, settles on the new home, makes the final contract payment on the new home,
28 or obtains an occupancy permit for the new home if the home is built on the owner's
29 property, whichever is earlier.

30 10-602.

31 (a) Prior to entering into a contract for sale or construction of a new home, the
32 builder shall disclose in writing to the owner whether:

1 (1) The builder participates in a new home warranty security plan
2 through which:

3 (i) The builder must provide the owner with a new home warranty;
4 or

5 (ii) The builder may provide a new home warranty to the owner at
6 the owner's option; or

7 (2) The builder does not participate in a new home warranty security
8 plan.

9 (b) The disclosure will be made on a form approved by the [Secretary]
10 DIVISION.

11 10-603.

12 (a) If the builder does not participate in a new home warranty security plan:

13 (1) The builder must make a disclosure AT THE TIME OF THE PURCHASE
14 OR CONSTRUCTION CONTRACT containing an explanation in 12 point type that:

15 (i) The owner should be aware that builders of new homes in the
16 State of Maryland are [not] required to be [licensed by the State and are not licensed
17 in most local jurisdictions] REGISTERED WITH THE CONSUMER PROTECTION
18 DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL;

19 (ii) Without a new home warranty or other express warranties, the
20 owner may be afforded only certain limited implied warranties as are provided by
21 law; and

22 (iii) 1. Describes any hazardous or regulated materials, including
23 asbestos, lead-based paint, radon, methane, underground storage tanks, licensed
24 landfills, unlicensed landfills, licensed rubble fills, unlicensed rubble fills, or other
25 environmental hazards, present on the site of the new home of which the builder has
26 actual knowledge; or

27 2. States that the builder is making no representations or
28 warranties as to whether there is any hazardous or regulated material on the site of
29 the new home;

30 (2) The owner shall acknowledge in writing that the owner understands
31 that the builder does not participate in a new home warranty security plan and that
32 the owner has read and understood the disclosure pursuant to paragraph (1) of this
33 subsection; and

34 (3) Any purchase or construction contract entered into which does not
35 contain the acknowledgment required by paragraph (2) of this subsection is voidable
36 by the owner.

1 (b) (1) An owner who has made the acknowledgment described in subsection
2 (a)(2) of this section may rescind the contract within 5 working days from the date of
3 the contract by providing the builder with written notice of the owner's rescission of
4 the contract; and

5 (2) Upon rescission, the owner shall be entitled to a refund of any money
6 paid to the builder for the new home.

7 (C) A BUILDER CONSTRUCTING A CUSTOM HOME AS DEFINED IN § 10-501(C)
8 OF THIS TITLE IS EXEMPT FROM THE DISCLOSURE REQUIREMENTS OF SUBSECTION
9 (A)(1)(III) OF THIS SECTION.

10 10-604.

11 (a) (1) Except for coverage excluded under paragraph (2) of this subsection,
12 a new home warranty provided under a new home warranty security plan shall
13 warrant at a minimum that:

14 (i) For 1 year, beginning on the warranty date, the new home is
15 free from any defects in materials and workmanship;

16 (ii) For 2 years, beginning on the warranty date, the new home is
17 free from any defect in the electrical, plumbing, heating, cooling, and ventilating
18 systems, except that in the case of appliances, fixtures and items of equipment, the
19 warranty may not exceed the length and scope of the warranty offered by the
20 manufacturer; and

21 (iii) For 5 years, beginning on the warranty date, the new home is
22 free from any structural defect.

23 (2) A new home warranty provided under a new home warranty security
24 plan may exclude the following:

25 (i) Damage to real property that is not part of the home covered by
26 the warranty or that is not included in the purchase price of the home;

27 (ii) Bodily injury or damage to personal property;

28 (iii) Any defect in materials supplied or work performed by anyone
29 other than the builder or the builder's employees, agents, or subcontractors;

30 (iv) Any damage that the owner has not taken timely action to
31 minimize or for which the owner has failed to provide timely notice to the builder;

32 (v) Normal wear and tear or normal deterioration;

33 (vi) Insect damage, except where the builder has failed to use
34 proper materials or construction methods designed to prevent insect infestation;

35 (vii) Any loss or damage that arises while the home is being used
36 primarily for nonresidential purposes;

1 (viii) Any damage to the extent it is caused or made worse by
 2 negligence, improper maintenance or improper operations by anyone other than the
 3 builder or its employees, agents, or subcontractors;

4 (ix) Any damage to the extent it is caused or made worse by changes
 5 of the grading of the ground by anyone other than the builder, its employees, agents,
 6 or subcontractors; and

7 (x) Any loss or damage caused by acts of God.

8 (b) A builder who has disclosed that the builder participates in a new home
 9 warranty security plan shall:

10 (1) Furnish to the owner at the time of the purchase or construction
 11 contract:

12 (i) The name and phone number of the builder's new home
 13 warranty security plan;

14 (ii) Details of the warranty coverage provided under the plan; and

15 (iii) In a form to be determined by the [Secretary] DIVISION,
 16 evidence that:

17 1. The builder currently is a participant in good standing
 18 with a plan that satisfies the requirements of § 10-606(a) of this subtitle; and

19 2. The new home is eligible for registration or has been
 20 registered in the builder's new home warranty security plan;

21 (2) ~~(i)~~ ~~Disclose~~ EXCEPT FOR A BUILDER CONSTRUCTING A CUSTOM
 22 HOME AS DEFINED IN § 10-501(C) OF THIS TITLE, DISCLOSE to the owner ~~any~~ AT THE
 23 TIME OF THE PURCHASE OR CONSTRUCTION CONTRACT:

24 (i) ANY actual knowledge that the builder has of any hazardous or
 25 regulated materials, including asbestos, lead-based paint, radon, methane,
 26 underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble
 27 fills, unlicensed rubble fills, or other environmental hazards, present on the site of
 28 the new home; or

29 (ii) ~~Disclose to the owner that~~ THAT the builder is making no
 30 representations or warranties as to whether there is any hazardous or regulated
 31 material on the site of the new home; and

32 (3) Either:

33 (i) Provide the new home with a new home warranty if the builder
 34 belongs to a new home warranty security plan that:

35 1. Requires the builder to register every new home that the
 36 builder builds; or

1 (2) On the warranty date, the builder shall provide the owner with
2 evidence, in a form approved by the [Secretary] DIVISION that the new home is
3 covered by a new home warranty that meets the requirements of this subtitle.

4 (3) Within 60 days from the warranty date, the builder's new home
5 warranty security plan shall provide the owner with validated new home warranty
6 documents.

7 (f) A new home warranty shall benefit any successor in title to the owner who
8 occupies the home for residential purposes during the warranty period.

9 10-606.

10 (a) A new home warranty security plan shall:

11 (1) Provide for the payment of claims against a builder for defects
12 warranted under this subtitle;

13 (2) Be operated by a corporation, partnership, or other legal entity
14 authorized to do business in Maryland;

15 (3) Demonstrate to the [Secretary] DIVISION that the plan will maintain
16 financial security to cover the total number of claims that the plan reasonably
17 anticipates will be filed against participating builders;

18 (4) File with the [Secretary] DIVISION a surety bond or an irrevocable
19 letter of credit from a federally insured financial institution in an amount set by the
20 [Secretary] DIVISION, but not less than \$100,000, for the benefit of owners injured by
21 the failure of the new home warranty security plan to pay claims as required under
22 this subtitle;

23 (5) Provide within the new home warranty documents the performance
24 standards that describe the builder's obligations for defects warranted under this
25 subtitle;

26 (6) Provide for the mediation of disputes between an owner and a builder
27 before a claim will be paid by the builder's new home warranty security plan; and

28 (7) Meet any other requirements determined by the [Secretary]
29 DIVISION and be approved by the [Secretary] DIVISION.

30 (b) (1) The [Secretary] DIVISION may revoke or suspend approval for a new
31 home warranty security plan if the [Secretary] DIVISION determines that the plan:

32 (i) Is unable to meet its obligations under a new home warranty; or

33 (ii) Is administered in a manner that denies owners the warranty
34 coverage required under this subtitle.

35 (2) Except for new homes that were registered in the new home warranty
36 security plan prior to the revocation or suspension and for which a purchase or

1 construction contract has been executed, during the time period that approval for a
2 new home warranty security plan is revoked or suspended by the [Secretary]
3 DIVISION, the new home warranty security plan may not provide warranty coverage
4 for any new homes built in Maryland.

5 (c) (1) Unless the [Secretary] DIVISION determines that a shorter notice
6 period is needed to protect the interests of the builders and owners, the [Secretary]
7 DIVISION shall give a new home warranty security plan at least 90 days notice that
8 the [Secretary's] DIVISION'S approval of the plan is being revoked or suspended; and

9 (2) A new home warranty security plan shall give to its participating
10 builders at least 60 days' notice of the plan's revocation or suspension, or such shorter
11 time as specified by the [Secretary] DIVISION if the plan receives less than 90 days'
12 notice.

13 10-607.

14 (a) If in accordance with § 10-604(b)(3) of this subtitle an owner does not wish
15 to require that the new home be covered by a new home warranty, the owner shall
16 make an affirmative waiver of the coverage at the time of the purchase or
17 construction contract.

18 (b) Before an owner makes a waiver under this section, the owner must be
19 informed in writing by the builder of the cost, nature, and extent of warranty
20 coverage that would be provided under the builder's new home warranty security
21 plan if not waived by the owner.

22 (c) An owner who has made an affirmative waiver under this section may
23 rescind the waiver and request a new home warranty in accordance with the
24 provisions of this subtitle within 3 working days from the date of the contract by
25 providing the builder with written notice of the owner's rescission of the waiver.

26 (d) The waiver under this section shall be made on a form determined by the
27 [Secretary] DIVISION and shall contain a section in which an owner who has made a
28 waiver may rescind the waiver pursuant to subsection (c) of this section.

29 (e) The form shall clearly and concisely explain in 12 point boldface type on a
30 separate piece of paper:

31 (1) The cost, nature, and extent of warranty coverage that would be
32 provided under the builder's new home warranty security plan if not waived by the
33 owner;

34 (2) That the failure of the owner to make a waiver requires the builder to
35 provide a new home warranty;

36 (3) That a builder may not refuse to build a new home for the owner
37 because the owner refuses to waive warranty coverage;

1 (4) That the owner should be aware that builders of new homes in the
2 State of Maryland are [not] required to be [licensed by the State and most local
3 jurisdictions] REGISTERED WITH THE CONSUMER PROTECTION DIVISION OF THE
4 OFFICE OF THE ATTORNEY GENERAL;

5 (5) Without a new home warranty or other express warranties, the
6 owner may be afforded only certain limited implied warranties as are provided by
7 law; and

8 (6) That an owner who has made an affirmative waiver of the warranty
9 coverage still may rescind the waiver and request a new home warranty in accordance
10 with the provisions of Title 10, Subtitle 6 of the Real Property Article, within 3
11 working days from the date of the contract by providing the builder with written
12 notice of the owner's rescission of the waiver.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
14 effect July 1, 2001.