

HOUSE BILL 79

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2002 Regular Session
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(PRE-FILED)

By: **Chairman, Economic Matters Committee (Departmental - Labor,
Licensing and Regulation)**

Requested: October 19, 2001

Introduced and read first time: January 9, 2002

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **New Home Builders - Regulation**

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

9 BY repealing and reenacting, with amendments,
10 Article - Business Regulation
11 Section 4.5-203
12 Annotated Code of Maryland
13 (1998 Replacement Volume and 2001 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Real Property
16 Section 10-302, 10-303, 10-303.1, 10-601, 10-602, 10-603, 10-604, 10-606,
17 and 10-607
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 2001 Supplement)

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

22 **Article - Business Regulation**

23 4.5-203.

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

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

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

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

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

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

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

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

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

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

Article - Real Property

10-302.

(a) The bond shall be payable to the State for the use and benefit of every person protected by the provisions of this subtitle. The vendor or purchaser shall deposit the bond with the [Department of Labor, Licensing, and Regulation] 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
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1 (1) \$10,000 to \$75,000	Full amount of
2	deposit held
3 (2) \$75,000 to \$200,000	\$75,000
4 (3) \$200,000 to \$500,000	\$200,000
5 (4) Over \$500,000	\$500,000

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

11 10-303.

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

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

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

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

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

26 Total Amount of Deposits Held	Amount of Letter of Credit
27 (1) \$10,000 to \$75,000	Full amount of
28	deposit held
29 (2) \$75,000 to \$200,000	\$75,000
30 (3) \$200,000 to \$500,000	\$200,000
31 (4) Over \$500,000	\$500,000

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

1 any given calendar year and the amount of the letter of credit shall be in accordance
2 with the amount of deposits held as of May 31.

3 10-303.1.

4 The [Department of Labor, Licensing, and Regulation] CONSUMER
5 PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL shall adopt
6 regulations for the administration of the provisions of this subtitle relating to bonds
7 and letters of credit.

8 10-601.

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

10 (b) "Appliances, fixtures, and items of equipment" means furnaces, boilers, oil
11 tanks and fittings, air purifiers, air handling equipment, ventilating fans, air
12 conditioning equipment, water heaters, pumps, stoves, refrigerators, garbage
13 disposals, compactors, dishwashers, automatic door openers, washers and dryers,
14 bathtubs, sinks, toilets, faucets and fittings, lighting fixtures, circuit breakers, and
15 other similar items.

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

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

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

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

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

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

28 (g) "Load-bearing portions of the home" means the load-bearing portions of
29 the:

30 (1) Foundation system and footings;

31 (2) Beams;

32 (3) Girders;

33 (4) Lintels;

34 (5) Columns;

- 1 (6) Walls and partitions;
- 2 (7) Floor systems; and
- 3 (8) Roof framing system.

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

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

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

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

13 (ii) Driveways;

14 (iii) Walkways;

15 (iv) Patios and decks;

16 (v) Boundary walls;

17 (vi) Retaining walls not necessary for the structural stability of the
18 new home;

19 (vii) Landscaping;

20 (viii) Fences;

21 (ix) Off-site improvements;

22 (x) Appurtenant recreational facilities; and

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

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

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

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

30 (m) "Plumbing systems" means:

- 1 (1) Gas supply lines and fittings;
- 2 (2) Water supply, waste, and vent pipes and their fittings;
- 3 (3) Septic tanks and their drain fields; and
- 4 (4) (i) Water, gas, and sewer service piping and their extensions to the
5 tie-in of a public utility connection; or
- 6 (ii) On-site wells and sewage disposal systems.
- 7 (n) ["Secretary" means the Secretary of Labor, Licensing, and Regulation or
8 the Secretary's designee.
- 9 (o)] (1) "Structural defect" means any defect in the load-bearing portions of a
10 new home that adversely affects its load-bearing function to the extent that the home
11 becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise
12 uninhabitable.
- 13 (2) "Structural defect" includes damage due to subsidence, expansion, or
14 lateral movement of soil that has been located or relocated by the builder.
- 15 (3) "Structural defect" does not include damage caused by movement of
16 the soil:
- 17 (i) Resulting from a flood or earthquake; or
- 18 (ii) For which compensation has been provided.
- 19 [(p)] (O) "Warranty date" means the first day that the owner occupies the
20 new home, settles on the new home, makes the final contract payment on the new
21 home, or obtains an occupancy permit for the new home if the home is built on the
22 owner's property, whichever is earlier.
- 23 10-602.
- 24 (a) Prior to entering into a contract for sale or construction of a new home, the
25 builder shall disclose in writing to the owner whether:
- 26 (1) The builder participates in a new home warranty security plan
27 through which:
- 28 (i) The builder must provide the owner with a new home warranty;
29 or
- 30 (ii) The builder may provide a new home warranty to the owner at
31 the owner's option; or
- 32 (2) The builder does not participate in a new home warranty security
33 plan.

1 (b) The disclosure will be made on a form approved by the [Secretary]

2 DIVISION.

3 10-603.

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

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

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

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

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

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

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

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

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

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

1 10-604.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) Furnish to the owner at the time of the purchase or construction
4 contract:

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

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

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

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

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

14 (2) [(i)] Disclose to the owner [any] AT THE TIME OF THE PURCHASE
15 OR CONSTRUCTION CONTRACT:

16 (I) ANY actual knowledge that the builder has of any hazardous or
17 regulated materials, including asbestos, lead-based paint, radon, methane,
18 underground storage tanks, licensed landfills, unlicensed landfills, licensed rubble
19 fills, unlicensed rubble fills, or other environmental hazards, present on the site of
20 the new home; or

21 (ii) [Disclose to the owner that] THAT the builder is making no
22 representations or warranties as to whether there is any hazardous or regulated
23 material on the site of the new home; and

24 (3) Either:

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

27 1. Requires the builder to register every new home that the
28 builder builds; or

29 2. Does not require the builder to register every new home
30 but the builder has decided to sell the new home with a new home warranty; or

31 (ii) If the builder belongs to a new home warranty security plan
32 that does not require the builder to register every new home and the builder has not
33 decided whether or not to sell the new home with a new home warranty, give the
34 owner the option of:

35 1. Purchasing the new home with the new home warranty
36 provided by the builder's new home warranty security plan; or

1 10-606.

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

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

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

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

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

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

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

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

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

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

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

27 (2) Except for new homes that were registered in the new home warranty
28 security plan prior to the revocation or suspension and for which a purchase or
29 construction contract has been executed, during the time period that approval for a
30 new home warranty security plan is revoked or suspended by the [Secretary]
31 DIVISION, the new home warranty security plan may not provide warranty coverage
32 for any new homes built in Maryland.

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

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

5 10-607.

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

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

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

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

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

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

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

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

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

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

37 (6) That an owner who has made an affirmative waiver of the warranty
38 coverage still may rescind the waiver and request a new home warranty in accordance

1 with the provisions of Title 10, Subtitle 6 of the Real Property Article, within 3
2 working days from the date of the contract by providing the builder with written
3 notice of the owner's rescission of the waiver.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect July 1, 2002.