

MAINE STATE LEGISLATURE

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No. 2558

S. P. 927

In Senate, March 5, 1974

Reported by Senator Clifford from the Committee on State Government
and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT to Amend the Industrialized Housing Law.

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

Sec. 1. R. S., T. 30, § 4773, sub-§§ 2 and 3, repealed and replaced. Subsections 2 and 3 of section 4773 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971, are repealed and the following enacted in place thereof:

2. **Closed wall construction.** "Closed wall construction" means a system of construction which produces a structural assembly enclosed on all sides by building materials and which conceals any combination of structural, mechanical, electrical or plumbing installations such that inspection at the building site cannot be accomplished without disassembly, damage or destruction.

3. **Industrialized housing.** "Industrialized housing" means a structural unit or units designed for residential occupancy and constructed in a manufacturing facility as closed wall construction, such that all of the individual features of the building system cannot be inspected at the building site. All references to industrialized housing in this Article shall include mobile homes, except where otherwise indicated by a separate reference to mobile homes.

Sec. 2. R. S., T. 30, § 4773, sub-§§ 9-14, additional. Section 4773 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971 and as amended by section 1 of chapter 446 of the public laws of 1973, is further amended by adding the following new subsections to read as follows:

9. **Evaluation agency.** "Evaluation agency" means an approved person or organization, public or private, determined by the authority to be qualified by

reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to investigate, analyze and approve an industrialized housing building system.

10. Inspection agency. "Inspection agency" means an approved person or organization, public or private, determined by the authority to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to provide adequate follow-up service for the inspection of the building system, to insure that industrialized housing is in full compliance with the Industrialized Housing Law, and to issue and attach State of Maine Seals of Approval to industrialized housing.

11. Independence of judgment. "Independence of judgment" means not being affiliated with or controlled by industrialized housing manufacturers in a manner which is likely to affect capacity to render reports and findings objectively and without bias.

12. H.U.D. "H.U.D." means the United States Department of Housing and Urban Development.

13. State of Maine Seal of Approval. "State of Maine Seal of Approval" means an insignia label issued by the Authority to be displayed on the industrialized housing and shall certify compliance with the Industrialized Housing Law and the rules and regulations adopted pursuant thereto and shall be prima facie evidence of such compliance.

14. Building system. "Building system" means the plans, specifications and documentation for industrialized housing, which may include structural, electrical, mechanical, plumbing and fire protection systems and other systems affecting health and safety, submitted by the manufacturer to the authority, or to H.U.D. or to an approved evaluation agency for approval, in sufficient detail to determine the conformity of the structure, materials and construction with the requirements of the Industrialized Housing Law and the rules and regulations adopted pursuant thereto.

Sec. 3. R. S., T. 30, § 4774, repealed and replaced. Section 4774 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971 and as amended by section 2 of chapter 446 of the public laws of 1973, is repealed and the following enacted in place thereof:

§ 4774. Approval

The Authority may approve industrialized housing, either by delegating the evaluation of a building system to an approved evaluation agency or by evaluating a building system itself. The authority shall adopt rules and regulations necessary to ensure that the evaluation agencies are qualified and that a sufficient number of such agencies are available to perform such evaluations and approvals. All industrialized housing approved and certified by the authority, or an approved evaluation agency, or by H.U.D. pursuant to this Article, shall be deemed to comply with the requirements of all ordinances and regulations enacted by local governments which govern the matters within the scope of this Article. Modifications of industrialized housing, which display the State of Maine Seal of Approval, may be made only in accordance with the rules and regulations of the authority.

No person, firm or corporation shall sell, deliver or install any industrial housing, not including mobile homes, in the State of Maine which has not been approved and certified by the authority, or approved agent, or H.U.D., if such industrialized housing was manufactured after February 1, 1975. However, the manufacturer of industrialized housing, not including mobile homes, may sell, deliver or install industrialized housing without a State of Maine Seal of Approval in municipalities which have adopted a building code and have a local enforcement agency if such industrialized housing is found by the local enforcement agencies to comply with the requirements of the building code incorporated in the ordinances and regulations enacted by the local governments.

No person, firm or corporation shall sell, deliver or install any mobile home in the State of Maine which has not been approved and certified by the authority or an approved agent, if such unit was manufactured after September 1, 1974.

Sec. 4. R. S., T. 30, §§ 4775, 4776 and 4778, repealed and replaced. Section 4775, as enacted by section 1 of chapter 456 of the public laws of 1971 and as amended by section 3 of chapter 446 of the public laws of 1973 and sections 4776 and 4778, as enacted by section 1 of chapter 456 of the public laws of 1971, of Title 30 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 4775. Rules and regulations

The authority shall issue and enforce rules and regulations necessary to carry out this Article. The rules and regulations, as far as practicable, shall formulate the standards and requirements for industrialized housing in terms of performance objectives so that adequate performance for the intended use is made the test of acceptability. The rules and regulations shall permit the use of new and improved technology, techniques, methods and materials, consistent with reasonable requirements of either the Building Officials and Code Administrators International, Inc. or the United States Department of Housing and Urban Development, which apply to industrialized housing, not including mobile homes.

The rules and regulations shall provide that industrialized housing will be approved by the authority or by an evaluation agency or by H.U.D. only if they find, after consideration of the design and specifications, and the results of such testing as they may prescribe or approve, that such industrialized housing meets reasonable requirements of health, safety and welfare. However, industrialized housing that has been evaluated, approved and certified by H.U.D. shall be deemed to be approved by the authority for the purposes of this Article and shall be entitled to display the State of Maine Seal of Approval.

If the authority determines that industrialized housing which has been approved and certified does not meet standards and requirements upon which its approval was based, the authority may suspend the approval and certification of such industrialized housing pending a timely review, after notice to the parties, and a final determination of acceptability by the authority. The

authority shall adopt separate rules and regulations for mobile homes which shall recognize the unique qualities of mobile homes, and which shall permit the use of new and improved technology, techniques, methods and materials, consistent with reasonable requirements of such nationally recognized codes as the Standard for Mobile Homes published by the American National Standards Institute or other similar codes.

Before adopting or amending the regulations governing industrialized housing or mobile homes, the authority shall publish notice of intent to adopt the regulations for at least 5 consecutive days in the state paper and shall thereafter have available for inspection at the office of the authority a copy of said proposed regulations for a period of 30 days. Any person desiring to make a statement of record opposing the adoption of all or any part of said regulations may appear at the next regular meeting, or a special meeting, of the Commissioners of the Housing Authority to present said statement. Any meeting for the adoption of or the amending of any rule or regulation shall be a public hearing and specific notice of the objective of such meeting shall be given in the manner hereinabove provided. The rules and regulations issued by the authority to carry out the provisions of this Article shall be effective when a copy is filed with the Secretary of State.

§ 4776. Reciprocity

Industrialized housing which is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities located in another state for installation on building sites within this State may be approved by the authority under this Article through the application of the same, or reasonably consistent standards and requirements as apply to industrialized housing which is produced in manufacturing facilities within this State. The authority may approve any industrialized housing which is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities in another state, upon a determination by the authority that such industrialized housing has been approved by the appropriate authority within such other state, or an approved evaluation agency or H.U.D., or by the research facilities of the model code organizations referenced in section 4775, on the basis of standards and requirements substantially equivalent to those set forth in this Article. However, the authority shall not grant this reciprocity unless the recipient state enters into an agreement with the authority whereby industrialized housing manufactured within Maine and displaying a State of Maine Seal of Approval shall be deemed approved for sale in said recipient state.

Any subsequent cancellation or suspension of the approval of an evaluation agency or code organization by the appropriate authority within such other state shall cause the suspension of the approval of such industrialized housing by the authority pending a timely review, after notice to the appropriate authority within such other state and the parties and a final determination of acceptability by the authority.

If the authority has reason to believe that the manner in which industrialized housing is being made, fabricated, formed or assembled in such other

state does not meet the standards and requirements upon which its approval was based, the authority may suspend its approval of such industrialized housing pending a timely review, after notice to the appropriate authority within such other state and the parties, and a final determination of acceptability by the authority. The authority may enter into formal agreements with the agencies or authorities of other states to carry out the purposes of this Article.

§ 4778. Inspection

The authority may inspect industrialized housing to ensure that industrialized housing is built according to its approved building system by delegating the inspection to an approved inspection agency or by delegating the inspection to a local enforcement agency or by inspecting itself. The authority shall adopt rules and regulations necessary to ensure that the inspection agency or local enforcement agency is qualified and that a sufficient number of such agencies is available to perform such inspection.

The delegation may include the issuance and attachment of the State of Maine Seal of Approval. The authority, an approved inspection agency, H.U.D. or an approved local enforcement agency may use persons employed by the inspected manufacturer to perform appropriate functions in the inspection process, including the actual affixing of the State of Maine Seal of Approval, provided that in no case shall a program of unsupervised self-inspection be authorized.

The authority shall periodically review the work of any approved evaluation agency or approved inspection agency in order to verify the reliability of each approved evaluation agency and inspection agency. The authority shall reinspect, or cause to be reinspected, certified industrialized housing which it has reason to believe has been sufficiently damaged after certification to warrant such inspection and take such action with regard to such industrialized housing as is necessary to eliminate dangerous conditions.

Sec. 5. R. S., T. 30, § 4779, amended. The 2nd and 3rd paragraph of section 4779 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971, are amended to read as follows:

The authority may establish and require such training programs in the concept, techniques and inspections of industrialized housing ~~and housing components~~ for the personnel of local enforcement agencies, as the authority deems advisable.

The authority may authorize the state inspectors to travel within or without the State for the purpose of inspecting the manufacturing facilities for industrialized housing ~~and for housing components~~ or for any other purpose in connection with this Article.

Sec. 6. R. S., T. 30, § 4779, amended. The first sentence of the last paragraph of section 4779 of Title 30 of the Revised Statutes, as enacted by section 5 of chapter 446 of the public laws of 1973, is repealed and the following enacted in place thereof:

Upon complaint by a purchaser or resident of any unit bearing the State of Maine Seal of Approval concerning an alleged defect in construction, such as heating or wiring or plumbing, in any such unit sold, manufactured or delivered in the State of Maine, the authority shall send an inspector to investigate and determine whether said unit complies with established regulations.

Sec. 7. R. S., T. 30, § 4779, amended. The 2nd sentence and the 3rd sentence from the end of the last paragraph of section 4779 of Title 30 of the Revised Statutes, as enacted by section 5 of chapter 446 of the public laws of 1973, are amended to read as follows:

If the authority shall determine that the inspected unit does not comply with duly adopted regulations, the ~~Executive~~ Director of the Authority or his duly authorized agent shall notify in writing the seller and manufacturer of said unit if their names can be ascertained.

In addition, the authority shall take whatever action it deems necessary against the manufacturer and seller of the defective units in accordance with procedures adopted within the scope of activities envisioned by this Article.

Sec. 8. R. S., T. 30, §§ 4780 and 4781, repealed and replaced. Sections 4780 and 4781 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971 and as amended by section 4 of chapter 446 of the public laws of 1973, are repealed and the following enacted in place thereof:

§ 4780. Appeals

The authority shall establish a board of appeals to decide appeals brought by any person or party regarding the application to such person or party of any rule or regulation issued by the authority pursuant to this Article. The board of appeals shall consist of 5 members as follows: One registered engineer, one member of the general public, one active local code enforcement officer, one representative of the industrialized housing industry and one representative of the mobile home industry. Final decisions by the board of appeals shall be reviewable before a Justice of the Superior Court. If any party appeals a decision of the authority to adopt or amend any rule or regulation within 30 days after the official adoption of said regulation or amendment and files notice of said appeal with the authority, the challenged regulation or amendment shall not be effective or enforced until final determination by the reviewing Justice in the Superior Court. The appeal of any one regulation or amendment shall not affect the validity of the other adopted regulation or amendment.

§ 4781. Injunctive relief and damages

The authority may initiate legal action in its own name for appropriate monetary or injunctive relief required to enforce this Article, including, but not limited to, injunctive relief from the Superior Court to enjoin the sale, delivery or installation of industrialized housing upon an affidavit of the authority specifying the manner in which such industrialized housing does

not conform to the requirements of this Article or to the rules and regulations issued by the authority pursuant hereto. If such legal action is undertaken in response to a consumer complaint, it may only be undertaken with the prior approval in writing of the office of the Attorney General.

Notwithstanding any other remedies which may be available, any person or party damaged as a result of a violation of this Article, or the rules and regulations adopted pursuant thereto, shall have a cause of action in the Superior Court against the person or party responsible for the manufacture and sale of such nonconforming industrialized housing to which the State of Maine Seal of Approval has been attached and any award may include damages and the cost of litigation, including reasonable attorney's fees.

Any person who violates the terms of an injunction issued under this section shall forfeit and pay to the authority, to be applied in the carrying out of this Article, a civil penalty of not more than \$1,000 for each violation.

Sec. 9. R. S., T. 30, § 4782, amended. The first sentence of the last paragraph of section 4782 of Title 30 of the Revised Statutes, as enacted by section 7 of chapter 446 of the public laws of 1973, is repealed and the following enacted in place thereof:

Inspectors of the authority or an approved inspection agency or H.U.D. shall insure that industrialized housing is built at least to the standards specified in this section.

Sec. 10. R. S., T. 30, § 4783, amended. The last sentence of section 4783 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 456 of the public laws of 1971, is repealed and the following enacted in place thereof:

For the purpose of applying the penalties of this section, a separate violation shall be deemed to have occurred with respect to each structural unit of industrialized housing involved.

Sec. 11. **Transitional provision.** Nothing contained in this Act shall be construed to invalidate any rules and regulations for industrialized housing or mobile homes adopted by the authority prior to the effective date of this Act.