

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1010

H. P. 657

House of Representatives, March 8, 1977

On Motion of Mr. Curran of South Portland referred to the Committee on State Government. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Najarian of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Create a Manufactured Housing Act.

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

Sec. 1. 10 MRSA Pt. 11, c. 951 is enacted to read:

PART 11 HOUSING

CHAPTER 951

MANUFACTURED HOUSING ACT

SUBCHAPTER I

GENERAL PROVISIONS

§ 9001. Short title

This chapter shall be known and may be cited as the "Manufactured Housing Act."

§ 9002. Declaration of purpose

1. Need for uniform code. It is found that:

A. The production and utilization of manufactured housing, including mobile homes, and the use of new and improved technologies, techniques, methods and materials has and will increase the available supply of housing and other buildings at prices which most residents of this State can afford;

B. Manufactured housing, including mobile homes fabricated in manufacturing facilities located away from the building site, is one such technology and technique;

C. Because of the manner of construction, assembly and use of manufactured housing, including mobile homes, like other finished products with concealed vital parts, hazards may be presented to health and safety unless properly manufactured, and these hazardous defects may not be readily ascertainable when inspected by purchasers or local enforcement agencies;

D. Building codes of the communities within this State, as enacted and applied, are not uniform and impede the utilization of manufactured housing, including mobile homes, and that most communities in this State make no provision for building safety regulation, and that there is nevertheless a need for the public regulation of the production, distribution and installation of manufactured housing, including mobile homes, so as to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage which might result from the improper manufacture of such housing and so as to improve the quality and durability of such housing;

E. Uniformity of building codes governing manufactured housing, including mobile homes, and uniformity in procedures for enforcing codes are matters of statewide interest and concern in that uniformity would increase the efficiency of the manufactured housing industry and further assure the safety of its products; and

F. The production and utilization of manufactured housing, including mobile homes, and the use of new technologies, techniques, methods and materials are enhanced by the utilization and application of uniform building codes and uniform procedures, for enforcing building codes within this State, and would be further enhanced by widespread reliance upon uniform and reasonable material specifications and the use performance criteria.

2. Mobile homes. It is further found that:

A. Mobile homes comprise a significant portion of the manufactured housing fabricated in this State or purchased by consumers in this State;

B. The National Mobile Homes Construction and Safety Standard Act of 1974 creates a system of public regulation by the Federal Government concerning mobile homes; and

C. The interests of consumers of mobile homes in this State and elsewhere can be more effectively protected by participation of an agency of this State in the enforcement of such federal regulations.

3. Need for Industrial Housing Law revision. It is further found and declared that:

A. The Industrialized Housing Law, as heretofore enacted, should be revised and recodified; and

B. The responsibility for administration and enforcement of such revised law should be incorporated among the powers of a newly-created state agency.

4. Intent. It is therefore declared that the State of Maine, by this Act, intends:

- A. To provide protection to the public against possible hazards in manufactured housing and mobile homes;
- B. To create conditions in this State which will facilitate the production and use of manufactured housing and mobile homes and the use of new technologies, techniques, methods and materials consistent with the requirements of health, safety and welfare;
- C. To establish a Manufactured Housing Board for the purpose of administering and enforcing this Act;
- D. To require such board to assume all the responsibilities of the Maine State Housing Authority under the Industrialized Housing Law;
- E. To authorize such board to carry out the appropriate administrative and enforcement activities under the National Mobile Home Construction and Safety Standards Act of 1974; and
- F. To grant to such board the investigative and regulatory powers it may reasonably require to accomplish the foregoing purposes and intent.

§ 9003. Definitions

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

1. Board. "Board" means the Manufactured Housing Board.
2. Building system. "Building system" means the plans, specifications and documentation for manufactured 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 board or to the Federal Department of Housing and Urban Development, 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 Manufactured Housing Act and the rules and regulations adopted pursuant thereto.
3. 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.
4. Dealer. "Dealer" means any person engaged in the sale, leasing or distribution of new manufactured housing or mobile homes primarily to persons who in good faith purchase or lease a manufactured housing or mobile home for purposes other than resale.
5. Defect. "Defect" means any defect in the performance, construction, components or material of manufactured housing or mobile homes that renders such housing or any part thereof not fit for the ordinary use for which it was intended.

6. Distributor. "Distributor" means any person engaged in the sale and distribution of manufactured housing or mobile homes for resale.

7. Evaluation agency. "Evaluation agency" means an approved person or organization, public or private, determined by the board to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to investigate, analyze and approve building systems.

8. Federal mobile home construction and safety standard. "Federal mobile home construction and safety standard" means a standard for the construction, design and performance of a mobile home which has been duly adopted by the Federal Government pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, or any successor legislation.

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

10. Imminent safety hazard. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

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

12. Inspection agency. "Inspection agency" means an approved person or organization, public or private, determined by the board 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 manufactured housing is in full compliance with the Manufactured Housing Act, and to issue and attach seals of approval to manufactured housing.

13. Installation. "Installation" means the process of affixing, or assembling and affixing, manufactured housing or mobile homes on foundations or footings at the building site.

14. Local enforcement agency. "Local enforcement agency" means the agency or agencies of local governments with authority to make inspections and to enforce the laws, ordinances and regulations enacted by the State and by local governments that establish standards and requirements applicable to the construction, alteration or repair of buildings.

15. Local government. "Local government" means any county, city, village, town or other jurisdiction within this State with authority to establish standards and requirements applicable to the construction, alteration and repair of buildings.

16. Manufactured housing. "Manufactured 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 manufactured housing in this chapter shall exclude mobile homes as defined herein.

17. **Manufacturer.** "Manufacturer" means any person engaged in manufacturing or assembling manufactured housing or mobile homes, including any person engaged in importing manufactured housing or mobile homes for resale.

18. **Manufacturing facilities.** "Manufacturing facilities" means the place or places, either on or away from the building site, at which machinery, equipment and other capital goods are assembled and operated for the purpose of making, fabricating, forming or assembling manufactured housing or housing components.

19. **Mobile home.** "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

20. **Mobile home construction.** "Mobile home construction" means all activities relating to the assembly and manufacture of a mobile home, including, but not limited to, those relating to durability, quality and safety.

21. **Mobile home safety.** "Mobile home safety" means the performance of a mobile home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such mobile homes, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur.

22. **Purchaser.** "Purchaser" means the first person purchasing manufactured housing or a mobile home in good faith for purposes other than resale.

23. **Seal of approval.** "Seal of approval" means an insignia label issued by the board to be displayed on manufactured housing and shall certify compliance with the Manufactured Housing Act and the rules and regulations adopted pursuant thereto and shall be prima facie evidence of that compliance.

§ 9004. Manufactured Housing Board

1. **Created.** There is created and established in the Department of Business Regulation a Manufactured Housing Board which shall have the responsibility of administering and enforcing this chapter. The board shall consist of 3 members appointed by the Governor. The members of the board shall be chosen to represent the broadest possible interest and experience which can be brought to bear in the implementation of this chapter and all other laws which the board is charged with the duty of administering and enforcing. At least one member shall be a professional engineer with proven experience in building technology. Initially, one member shall be appointed to serve a term ending July 1, 1978, another member shall be

appointed to serve a term ending July 1, 1979, and a 3rd member shall be appointed to serve a term ending July 1, 1980. Thereafter, the Governor shall appoint each member to serve a 3-year term commencing with the July 1 terminus of the term of his predecessor in office. Members shall serve for their appointed term and until their successor is appointed and duly qualified. If by virtue of death, removal, resignation or otherwise, a vacancy occurs prior to the expiration of a term of appointment, the Governor shall appoint a successor to serve the balance of the unexpired term. The Governor may appoint a temporary member to fill any vacancy occurring on the board, such temporary member may serve for a period of not exceeding 120 days from the date of such appointment.

2. Expenses. Members shall receive \$50 per day for their services at meetings or hearings and shall receive necessary traveling expenses for attending any meeting of the board and for any other travel in connection with the official business of the board and under the specific authority of the board.

3. Meetings. Two members of the board shall constitute a quorum. The board shall meet at the written request of the director or of a majority of the members of the board. Meetings of the board shall be held at such time and place as shall be determined by the board. At least 6 meetings per calendar year shall be held.

§ 9005. Budget; director; employees

The board shall prepare a biennial budget and, after approval by the Commissioner of Business Regulation, shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The board is authorized to hire a director who shall be the principal administrative, operational and executive employee of the board. The director shall be a professional engineer with proven experience in building technology or have at least 2 years of practical experience in the field of building code administration and enforcement at the state or federal level. The director shall attend all meetings of the board, shall keep a record of all proceedings of the board, and shall be permitted to participate fully in all proceedings of the board but shall not be a voting member of the board. Subject to the budget adopted by the board, the director may hire such competent professional personnel, inspectors and other staff he deems necessary and he may obtain office space, goods and services as required.

§ 9006. Federal funds and other funding sources

The board shall have authority to seek and receive funds from the Federal Government and other public or private sources to further its activities under this chapter.

§ 9007. Delegation of board powers

1. Rulemaking. The board shall issue and enforce rules and regulations necessary to carry out this chapter. Wherever a provision of this statute vests a power or function in the board, the board may by rule or regulation

delegate such power or function to the director; provided that the board shall not be authorized to delegate rulemaking powers created by this chapter.

2. Rules and regulations. Rules and regulations of the board shall be adopted, amended or repealed only in accordance with the following rule-making procedure.

A. Notice of intended rulemaking shall be published in the state paper. On or before the day of publication, a copy of the notice shall be mailed by regular mail to each person listed in the registry required to be maintained pursuant to subsection 3. The notice shall generally describe the nature of the rule-making action proposed by the board and shall indicate the time and place for rule-making hearings.

B. On or before the day of publication pursuant to paragraph A, the board shall make available for inspection at its principal office a copy of the text of the regulations proposed.

C. No sooner than 15 days after publication, the board shall conduct one or more public hearings for the presentation of oral or written comments by interested parties.

D. The board may adopt the regulations at a public hearing or at a subsequent meeting of the board. Regulations finally adopted may vary from regulations originally proposed pursuant to paragraph B, but such varied regulations shall not have a scope significantly broader than the regulations originally proposed.

3. Register. The board shall establish and maintain a register of persons entitled to specific notice of a proposed rulemaking in the manner provided by subsection 2, paragraph B. Any person desiring to be listed on this register shall submit written notice to the board, stating a desire to be so listed and indicating the name and address of the person to be notified. The board shall review this register from time to time to ascertain the continuing interest of the persons listed thereon.

§ 9008. Inspections; investigations; hearings

1. Inspections; investigations. The board is authorized to conduct any inspections and investigations as may be necessary to carrying out responsibilities under this chapter.

2. Authorized designees. For purposes of this chapter, persons duly designated by the board, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized:

A. To enter, at reasonable times with or without advance notice, any factory, warehouse or establishment in this State in which manufactured housing or mobile homes are manufactured, stored or held for sale or resale;

B. To inspect, at reasonable times, within reasonable limits and in a reasonable manner, any factory, warehouse or establishment located in this State and to inspect the books, papers, records and documents as are set forth in subsections 3 and 4; and

C. To perform any of the activities specified in paragraphs A and B outside the territorial boundaries of this State, to the extent the persons may have authority to so enter and inspect, whether by delegation or deputization from the Federal Government, by contract, or by express or implied consent of the owner of the premises entered or the premises, books, papers, records or documents inspected.

Any inspections shall be commenced and completed with reasonable promptness. The board is authorized to contract with local governments and private inspection organizations to carry out such inspection functions to the extent not prohibited by federal law, rule or regulation.

3. Authority of board. In order to carry out the purposes of this chapter, the board is authorized:

A. To hold such hearings, take such testimony, sit and act at such times and places, administer such oaths and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements or other records, as the board or any duly authorized member, officer or employee of the board deems advisable;

B. To examine and copy documentary evidence of any person having materials or information relevant to any function of the board under this chapter;

C. To require by order any person to file, in such form as the board may prescribe, reports or answers in writing to specific questions relating to any function of the board under this chapter. Such answers or reports may be made under oath and shall be filed with the board within such reasonable period as the board may prescribe; and

D. To request from any state agency any information the board deems necessary to carry out the functions of the board under this chapter, and each agency is authorized and directed to cooperate with the board and to furnish information upon request made by the board.

The head of any state agency may detail, at his discretion and with or without reimbursement, any personnel of the agency to assist in carrying out the duties of the board under this chapter.

4. Responsibilities of manufacturer, distributor and dealer. Each manufacturer, distributor and dealer of manufactured housing or mobile homes located in this State, and each manufacturer, distributor and dealer located beyond the territorial boundaries of this State who offers one or more units of manufactured housing or mobile homes for delivery, introduction or importation into this State shall establish and maintain such records, make such reports and provide such information as the board, consistent with any applicable federal law and any rules or regulations issued pursuant thereto, may reasonably require to enable the board to determine whether such manufacturer, distributor or dealer has acted or is acting in compliance with this chapter and any applicable federal construction and safety standards. Each manufacturer, distributor and dealer shall, upon request of a person duly

designated by the board and appropriately identifying himself as such, provide the person with access to the premises, books, papers, records or documents authorized to be inspected pursuant to subsection 2.

5. Notification required. To the extent not prohibited by federal law, rule or regulation, the board is authorized to require a manufacturer, dealer or distributor located in this State or offering manufactured housing or mobile homes for sale, delivery, introduction or importation into this State to give notification of specified performance data and other technical data reasonably related to performance and safety to:

A. Each prospective purchaser of such manufactured housing or mobile home before its first sale for purposes other than resale, at each location where any manufacturer's manufactured housing or mobile homes are offered for sale by a person with whom the manufacturer has a contractual, proprietary or other legal relationship and in a manner determined to be appropriate by the board; and

B. The first person who purchases such manufactured housing or mobile home for purposes other than resale, at the time of purchase or in printed matter placed in such manufactured housing or mobile home.

§ 9009. Confidential information

1. Reported information. All information reported to or otherwise obtained by the board, its director or any of its employees which contains or relates to a trade secret, or which, if disclosed would put the person furnishing the information at a substantial competitive disadvantage, shall be considered confidential, except that the information may be disclosed to other federal, state or local officials concerned with enforcement of this chapter or when relevant in any proceeding under this chapter or any related law, rule or regulation.

2. Refusal to release information. In any action brought against a member, officer or employee of the board pursuant to Title 1, section 410, for refusal to release information in the custody or control of the board, it shall be a complete defense if the defendant refused to release the information in the good faith belief that such information was rendered confidential by the terms of subsection 1.

3. State not liable. No action for damages shall accrue against the State or the board, or the members, officers or employees of the board:

A. For the wrongful release of information rendered confidential by subsection 1; or

B. For the publication of alleged defects or hazardous conditions existing or thought to exist in manufactured housing or mobile homes.

§ 9010. Out-of-state manufacturers; distributors and dealers

Within 30 days of the effective date of this chapter, it shall be the duty of every manufacturer, distributor or dealer not located in this State, who offers manufactured housing or mobile homes for delivery, introduction or

importation into this State to designate in writing a local agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of such manufacturer, distributor or dealer, and to file one copy of such designation with the board and another with the Secretary of State, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions and requirements may be made upon such manufacturer by service upon such designated agent at his office or usual place of residence, with a copy thereof mailed on or before the day of such service by regular mail to the manufacturer, distributor or dealer at his principal place of business or at any other address as the manufacturer, distributor or dealer may have designated in writing to the board, and service accomplished in such manner shall have the same effect as if made personally upon the manufacturer, distributor or dealer. In default of the designation of such agent, service of process or any notice, order requirement or decision in any administrative or judicial proceeding pursuant to this chapter may be made by service upon the Secretary of State with a copy thereof mailed on or before the day of such service by registered or certified mail to the manufacturer, distributor or dealer at his principal place of business or any other address the manufacturer, distributor or dealer may have designated in writing to the board. Service of process upon the Secretary of State shall be accompanied by an affidavit averring that notice by mail in the manner herein provided has been accomplished.

§ 9011. Civil and criminal penalty

1. Penalty. Whoever violates any provision of section 9022, subsection 3, or section 9054, or any regulation or final order issued thereunder, shall be liable to the State of Maine for a civil penalty not to exceed \$1,000 for each violation. Each violation of section 9022, subsection 3 or section 9054 or any regulation or order issued thereunder, shall constitute a separate violation with respect to each unit of manufactured housing or each mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

2. Crime designated. An individual or a director, officer or agent of a corporation who knowingly and willfully violates section 9025 or 9054 in a manner which threatens the health or safety of any purchaser shall be guilty of a Class E crime.

3. Action to recover penalty. In any civil action to recover a penalty pursuant to subsection 1 or in any criminal action pursuant to subsection 2 prosecuted for a violation of section 9022, subsection 3, paragraph C, subparagraph (1) or section 9054, it shall be a valid defense to such action or actions for a defendant to establish:

A. That he did not have reason to know in the exercise of due care that the manufactured housing or mobile home in question was not in conformity with the applicable state or federal standards; or

B. That, prior to the first purchase of the manufactured housing or mobile home in question in good faith for purposes other than resale, he held a certificate issued by the manufacturer or importer of such manufactured housing or mobile home to the effect that such manufactured housing or mobile home conforms to all applicable state or federal standards, unless such person knew that the manufactured housing or mobile home did not so conform.

4. Court action. Civil actions brought under this section may be brought in the Superior Courts or, if the amount of civil penalties demanded will not exceed the applicable jurisdiction limit, in the District Courts of this State. Such action may be brought in the county or district, as the case may be, wherein the act or transaction constituting the violation occurred, or in the county or division, as the case may be, wherein the defendant is found or is an inhabitant or transacts business, or, in any case where there are multiple defendants or where service of process with respect to one or more defendants has been made upon the Secretary of State as provided in section 9010, in the County of Kennebec or the Seventh Judicial District, as the case may be.

5. Service of process. Service of process on non-resident defendants in civil actions brought under this section may be accomplished by service of process upon the Secretary of State or upon the local agent for such defendant if one has been designated pursuant to section 9010.

6. Criminal actions. Criminal actions shall be prosecuted in accordance with the Maine Criminal Code.

SUBCHAPTER II

STATE ENFORCEMENT OF FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

§ 9021. State enforcement agency

1. Enforcement agency. The board is hereby designated as the sole agency authorized to act on behalf of the State of Maine as the state enforcement agency for the enforcement of mobile home safety and construction standards adopted pursuant to the National Mobile Home Safety and Construction Standards Act of 1974 (P.L. 93-383, Title VI) as presently enacted and as may be amended from time to time.

2. Approved status; transferred. If, upon the effective date of this legislation, the Maine State Housing Authority shall have qualified, either conditionally or unconditionally, as an approved state enforcement agency under the foregoing federal act, it is the intention and purpose of this section to transfer such approved status to the board as the statutory successor to the Maine State Housing Authority for these purposes.

§ 9022. State plan; enforcement activities

1. State plan. Subject to the approval of the Commissioner of Business Regulation, the board is authorized to submit to the Federal Government a state plan for the enforcement of federal mobile home construction and safety standards with respect to mobile homes manufactured or located in this State and to withdraw or modify any such plan previously submitted by the board or by the Maine State Housing Authority.

2. Enforcement activities. To the extent required or permitted by federal law, rule or regulation, the board may provide in such state plan for the following activities among others which may be reasonably necessary to accomplish the purposes of this chapter :

A. Receipt, handling and appropriate referral of consumer complaints and other information relating to a failure to conform with a federal mobile home construction and safety standard or to an imminent safety hazard in one or more mobile homes covered by the National Mobile Home Construction and Safety Standards Act of 1974;

B. Investigation of such complaints and other information by inspection, hearing or otherwise;

C. Requiring and approving manufacturer plans for notification and correction of failures to conform and imminent safety hazards;

D. Supervision and monitoring of manufacturer compliance with plans for modification and correction;

E. Supervision and monitoring of manufacturer handling of consumer complaints and other information; and

F. Setting of monitoring inspection fees in accordance with federal guidelines and participation in national fee distribution systems established by the Federal Government.

3. Rules, regulations; adopted. The board shall adopt such rules and regulations, in the manner provided by section 9007, as may be reasonably necessary to carry out the provisions of such state plan or to otherwise accomplish the purposes of this chapter. Such rules and regulations, if adopted, shall include the following provisions :

A. Every manufacturer of mobile homes in this State and every manufacturer, who offers a mobile home for sale, lease, delivery, introduction or importation into this State shall furnish to the distributor or dealer at the time of delivery of each such mobile home produced by such manufacturer a certificate in such form as may be required by federal law, rule or regulation that such mobile home conforms to all applicable federal mobile home construction and safety standards.

B. Notification of defects.

(1) Every manufacturer of mobile homes in this State and every manufacturer who offers mobile homes for sale, lease, delivery, introduction or importation into this State shall furnish notification of any defect in any mobile home produced by such manufacturer, which such manufacturer

determines, in good faith, relates to a federal mobile home construction and safety standard or contains a defect which constitutes an imminent safety hazard to the purchaser of such mobile home, in the manner and within the time after such manufacturer has discovered the defects as may be prescribed by federal law, rule or regulation.

(2) The notification required by subparagraph (1) shall be accomplished as follows:

(a) By mail to the first purchaser, not including any dealer or distributor of such manufacturer, of the mobile home containing the defect, and to any subsequent purchaser to whom any warranty on such mobile home has been transferred;

(b) By mail to any other person who is a registered owner of such mobile home and whose name and address has been ascertained pursuant to procedures established by the board or by the Federal Government for the registration of the owner; and

(c) By mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such mobile home was delivered.

(3) If the board determines, in the manner provided by federal law, rule or regulation, that any mobile home subject to the enforcement jurisdiction of the board does not comply with an applicable federal mobile home construction and safety standard or contains a defect which constitutes an imminent safety hazard, then the board shall direct the manufacturer of such mobile home to furnish the notification specified in subparagraphs (1) and (2) and take any subsequent enforcement action which is authorized or required by federal law, rule or regulation.

C. Prohibited acts.

(1) No person shall:

(a) Manufacture for sale, lease, sell, offer for sale or lease, or introduce, deliver or import into this State any mobile home which is manufactured on or after the effective date of any applicable federal mobile home construction and safety standard lawfully adopted pursuant to the National Mobile Home Construction and Safety Standards Act of 1974 and which does not comply with such standard;

(b) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required in section 9008;

(c) Fail to furnish notification of defect as required by paragraph B;

(d) Fail to issue a certification required by paragraph A;

(e) Issue a certification to the effect that a mobile home conforms to all applicable federal mobile home construction and safety standards if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect; or

(f) Fail to comply with a final order issued by the board pursuant to the Manufactured Housing Act in connection with the administration or enforcement of a federal mobile home construction or safety standard.

(2) Division (a) of subparagraph (1) shall not apply to:

(a) The sale, the offer of sale or the introduction, delivery or importation into this State of any mobile home after the first purchase of it in good faith for purposes other than resale; or

(b) A mobile home intended solely for export from the United States and so labeled or tagged on the mobile home itself and on the outside of the container, if any, in which it is to be exported.

SUBCHAPTER III

MANUFACTURED HOUSING REGULATIONS

§ 9051. Rules and regulations; standards

1. Generally. The board shall adopt such rules and regulations, in the manner provided by section 9007 as may be reasonably necessary to administer and enforce this subchapter.

2. National standards. Such rules and regulations shall provide standards for manufactured 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 Administration International, Inc. or the U.S. Department of Housing and Urban Development, which apply to manufactured housing.

3. State codes. The rules and regulations shall further provide that:

A. All installations of electrical equipment in manufactured housing shall apply with the amount edition of the National Electrical Code, Pamphlet #70, as amended, published by the National Fire Protection Association and the applicable orders, rules and regulations of the Electricians' Examining Board and shall be subject to the rights and duties of state electrical inspectors, as set forth in Title 32, chapter 17;

B. All installations of plumbing fixtures in such manufactured housing shall comply with the rules and regulations of the Department of Human Services as set forth in the Maine Plumbing Code;

C. All installations of oil burners in such manufactured housing shall comply with the rules, regulations and standards adopted by the Oil Burners' Licensing Board;

D. Such manufactured housing shall comply with the rules and regulations of the Insurance Superintendent; and

E. Such manufactured housing shall comply with the rules and regulations of the Director of the Bureau of Labor.

4. H.U.D. approved housing. Subject to such reasonable assurances as the board may require regarding compliances with the standards prescribed by subsection 3 and subject also to the requirement prescribed in section 9052, subsection 2, paragraph C, manufactured housing that has been evaluated, approved and certified by H.U.D. shall be deemed to comply with standards adopted by the board pursuant to this section and such housing shall be entitled to a seal of approval in the manner prescribed by section 9052, subsection 1.

5. Fees. The board shall establish a schedule of fees to be charged in connection with the administration and enforcement of this subchapter. § 9052. Approval of manufactured housing

1. Seal of approval. Approval of manufactured housing, as required by this subchapter, shall be evidenced by a seal of approval issued by the board to be permanently affixed to the manufactured housing. Affixation of a seal of approval to manufactured housing shall be prima facie evidence of compliance of such housing with applicable standards of the board pursuant to this subchapter. Manufactured housing to which a seal of approval has been affixed shall be deemed to comply with the requirements of all ordinances and regulations enacted by local governments which govern matters within the scope of this subchapter.

2. Conditions for approval. No seal of approval shall be affixed to manufactured housing unless the requirements enumerated in this subsection have been met.

A. The building system for manufactured housing shall be approved by the board or by an authorized evaluation agency as conforming with applicable standards adopted by the board.

B. The manufactured housing shall be certified by the board or by a qualified inspection agency as having been built in accordance with an approved building system. Such certification may be made by a qualified inspection agency on the basis of its evaluation of the quality assurance procedures of the manufacturer and such agency's inspections of the manufacturing facility conducted with such frequency to reasonably assure that the objectives of this paragraph have been met.

C. The manufacturer of such housing shall certify that the manufactured housing conforms to all applicable standards adopted by the board, and that manufacturer's certification shall be permanently affixed to the manufactured housing in accordance with such requirements as the board may by regulation prescribe.

3. Authorized evaluation and inspection agencies.

A. The board shall by regulation establish procedures and standards for the qualification of private or public agencies to perform evaluation or inspection services required by this subchapter. Criteria for Agencies En-

gaged in System Analysis and Compliance Assurance for Manufactured Building, ASTM-E541-75, as adopted by the American Society of Testing and Materials shall be considered by the board in adopting such standards and procedures.

B. The board shall qualify as evaluation or inspection agencies, or both, only those persons or organizations which it determines to comply with the standards adopted by the board pursuant to paragraph A. Evaluation or inspection agencies, or both, qualified under this subsection may contract with manufactured housing manufacturers to provide evaluation or inspection services, or both, required by this subchapter.

C. Qualification of an evaluation or inspection shall be suspended by the board if after appropriate notice and administrative hearing it determines the agency is no longer qualified as meeting the standards adopted pursuant to paragraph A. The board may conduct such reviews of the work of a qualified agency as the board determines are necessary to reasonably assure continuing compliance of such qualified agency with the standards adopted pursuant to paragraph A.

4. **Manufacturer's certificate as warranty.** Affixation of a certificate to manufactured housing shall signify the manufacturer's representation and warranty to all purchasers of such housing that such housing was manufactured in accordance with all applicable standards of the board in effect on the date of manufacture.

§ 9053. Notification and correction of defects

1. **Manufacturer.** Every manufacturer of manufactured housing in this State and any manufacturer who offers manufactured housing for sale, lease, delivery, introduction or importation into this State shall furnish notification of any defect in manufactured housing produced by such manufacturer which such manufacturer determines, in good faith, relates to a standard of the board which is applicable to such housing or which constitutes an imminent safety hazard to an occupant of such housing. Such notification shall be accomplished in such manner and within such time as the board may by regulation prescribe, except that the regulations shall at least provide the following:

A. Notification by mail to the first purchaser of such manufactured housing, other than a dealer or distributor of such manufacturer, and to any subsequent purchaser the identity of which the manufacturer is aware;

B. Notification by mail or some expeditious means to the dealer or dealers of such manufacturer to whom such manufactured housing was delivered; and

C. Notification by mail to the board.

2. **Distributors and dealers.** Any person who sells, leases, delivers or transports manufactured housing to which a seal of approval has been affixed pursuant to this subchapter shall notify the board and any present or prospective purchaser of such housing in writing of any defect resulting from damage or modification to such housing which such person determines, in good faith,

relates to a standard of the board which is applicable to such housing or which constitutes an imminent safety hazard to an occupant of such housing. This requirement shall not apply to sales or leases of manufactured housing after the first purchase of such housing by a person for purposes other than resale and shall not apply to deliveries or transportations of such manufactured housing which occur after the first installation of such housing on a permanent foundation.

3. **Corrections.** The person responsible for a noncompliance with the standards adopted by the board or for the creation of an imminent safety hazard shall promptly effect such repairs and modifications as may be necessary to correct the nonconformance or eliminate the safety hazard. In any action by a consumer to compel compliance with this subsection, in which the plaintiff shall have established that the manufactured housing did not comply with an applicable standard on the date of the first purchase of it by a person for purposes of resale or on the date of its first installation on a permanent foundation whichever date shall be the later, each defendant shall have the burden of coming forward with evidence to establish that he was not responsible for such noncompliance or defect. Each defendant who fails to establish that he was not responsible by the weight of evidence shall be jointly and severally liable for the costs of such repairs.

§ 9054. Further prohibited acts

1. **Prohibited.** No person shall:

A. Manufacture for sale, lease, sell, offer for sale or lease, or introduce, deliver or import into this State, any manufactured housing which is manufactured on or after the effective date of this Act which does not comply with the applicable standards of the board in effect on the date of such manufacture;

B. Fail or refuse to permit access to or copy of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection as required in section 9008 of this chapter;

C. Fail to furnish notification of a defect as required by section 9053;

D. Fail to issue the certification required by section 9052;

E. Issue a certification to the effect that manufactured housing conforms in all respects to all applicable standards of the board if such person in the exercise of due care has reason to know that such certification is false or misleading in any material respect; or

F. Fail to comply with a final order issued by the board.

2. **Waivers.** The provisions of subsection 1 shall be waived by the board with respect to manufactured housing which is installed in a municipality which has adopted a building code and has a local building code enforcement agency if:

A. Such industrialized housing is found by the local enforcement agency to comply with the applicable local building code; and

B. The local enforcement agency so certified to the board in such form and detail as the board may reasonably require.

3. Not applicable. The prohibition of subsection 1 shall not apply to a sale, lease, offer, introduction, delivery, installation or importation of manufactured housing after the first purchase of such housing by a person for purposes other than resale.

4. Exports. The prohibition of subsection 1 shall not apply to manufactured housing intended solely for export from the United States, and so labeled or tagged on the manufactured housing itself.

§ 9055. Enforcement

1. Revocation of seal of approval. If the board determines, after appropriate notice and administrative hearing, that manufactured housing which displays a seal of approval, pursuant to section 9053, does not meet the standards and requirements upon which such seal was affixed, the board may suspend such approval and take such additional enforcement action pursuant to this section as the board deems appropriate in the circumstances.

2. Consumer complaints. Upon complaint by a purchaser or occupant of any manufactured housing bearing the seal of approval concerning an alleged defect in construction, the board shall investigate and determine whether the unit complies with established regulations. The board shall notify the complainant of his right to relief under subsection 4. If the board determines the defect occurred in other similar manufactured housing, the board shall notify all ascertainable purchasers of such housing, in accordance with the records obtained from the manufacturer, distributor and dealer of their possible right of action under this subchapter. The board may charge special fees to the manufacturer, distributor or dealer of those defective units to cover the notification and investigation process. Failure of the manufacturer or seller to retain reasonable business records, or to provide access to those records in response to a request by the authority pursuant to this subchapter, shall be considered a violation of this subchapter.

3. Actions by the Attorney General. The Attorney General, upon petition by the board, may initiate legal action in the Superior Court for appropriate monetary or injunctive relief required to enforce this subchapter, including, but not limited to, injunctive relief to enjoin the sale, delivery or installation of manufactured housing upon an affidavit of the board specifying the manner in which such manufactured housing does not conform to the requirements of this subchapter or to the rules and regulations issued by the board pursuant hereto. Any person who violates the terms of an injunction issued under this subsection shall pay a civil penalty of not more than \$1,000 for each violation to the board, to be applied in the carrying out of this subchapter. In any action for monetary damages, the Attorney General may seek to recover damages on behalf of private parties to the extent such parties may consent to be so represented.

4. Private actions. Notwithstanding any other remedies which may be available, any person damaged as a result of a violation of this subchapter, or the rules and regulations or standards adopted pursuant thereto, shall have a cause of action in the Superior Court against the person or party responsible for the manufacture or sale, or both, of such nonconforming manufactured housing and any award shall include appropriate damages, the costs of litigation and reasonable attorney's fees.

§ 9056. Appeals

Any person aggrieved by a final action of the board may appeal that action to the Administrative Court in the manner provided by Title 5, chapter 305. The action of the board appealed from shall be stayed automatically for a period of 20 days commencing with the date of service of notice of appeal on the board. Such stay may be extended by order of the Administrative Court upon finding that irreparable injury to the rights of an aggrieved person would otherwise result.

§ 9057. Administrative responsibility for enforcement of Industrialized Housing Law

1. Board responsibility. Commencing with the effective date of this act, the board shall be responsible for administration and enforcement of the Industrialized Housing Law, Title 30, chapter 239, subchapter II, article 7, as heretofore enacted and modified.

2. Law not applicable. The Industrialized Housing Law shall not be applicable to any industrialized housing, not including mobile homes, which is manufactured on or after the effective date of this subchapter nor shall the Industrialized Housing Law be applicable to any mobile home which bears a seal certifying compliance with standards adopted pursuant to the National Mobile Home Construction and Safety Standards Act of 1974. Responsibility for the administration and enforcement of the Industrialized Housing Law as heretofore vested in the Maine State Housing Authority shall be terminated on the effective date of this subchapter and no consumer complaint investigation or other enforcement activity with respect to industrialized housing certified pursuant to the Industrialized Housing Law shall be undertaken by the authority after the effective date of this paragraph.

3. Private right. Nothing in this section shall be construed to limit in any way the private right of action conferred on any person or party damaged as a result of a violation of the Industrialized Housing Law in connection with industrialized housing required to be certified pursuant to this law. All substantive rights and obligations created pursuant to the Industrialized Housing Law shall continue in effect with respect to industrialized housing, including mobile homes which were approved and certified pursuant to such law. Consumer complaint investigations arising under section 4779 of the Industrialized Housing Law shall be the responsibility of the Manufactured Housing Board, provided that no consumer complaint shall be accepted for investigation by the board pursuant to section 4779 after the 2nd anniversary date of the manufacture of such industrialized housing or mobile home.

Sec. 2. Report to Legislature. The board shall prepare for submission to the first regular session of the 109th Legislature a suitable report, with the recommendations of the board, regarding the need for additional or modified legislation concerning the following subjects.

- A. Regulation of the fabrication and assembly of manufactured buildings other than manufactured housing and mobile homes, as defined in this Act;
- B. Regulation of the sale of used manufactured housing and used mobile homes; and

C. Further regulation of the modification, installation or transportation of manufactured housing and mobile homes after certification in accordance with this Act.

Sec. 3. Transfer of staff. The board may employ persons employed by the Maine State Housing Authority in its administration and enforcement of the Industrialized Housing Law, as heretofore enacted. The board, in its discretion, may pay such persons at rates of pay commensurate with the compensation such persons received from the authority, notwithstanding the limitations of any applicable personnel rule.

Sec. 4. Transitional regulations. Rules and regulations for the certification of industrialized housing as adopted by the Maine State Housing Authority pursuant to the Industrialized Housing Law shall be deemed to be rules and regulations of the Manufactured Housing Board for purposes of administering and enforcing subchapter III of the Manufactured Housing Act, until and unless modified by the board pursuant to section 7007, provided that such regulations shall remain effective for a period of only 90 days after the effective date of this Act without formal adoption by the board pursuant to section 7007.

Sec. 5. Formerly accrued debts and receivables. All debts owed by the Maine State Housing Authority and all receivables earned by it in connection with the administration and enforcement of the Industrialized Housing Act before the effective date of this Act shall remain obligations and rights of the authority. All debts and receivables accruing on or after the effective date of this Act shall be the obligations and rights of the Manufactured Housing Board.

Sec. 6. Appropriation. There is appropriated from the General Fund to the Department of Business Regulation, Manufactured Housing Board, for the fiscal years ending June 30, 1978, and June 30, 1979, the sum of \$51,800 to carry out the purposes of this Act. The breakdown shall be as follows:
BUSINESS REGULATION, DEPARTMENT OF

	1977-78	1978-79
Manufactured Housing Board		
Personal Services	(2) \$23,500	(2) \$25,000
All Other	1,000	1,200
Capital Expenditures	500	600
	<hr/>	<hr/>
	\$25,000	\$26,800

STATEMENT OF FACT

The principal purposes of this bill are to:

1. Create an agency within the cabinet structure to assume responsibility for regulation of manufactured housing;
2. Authorize the participation of such agency in the federal program for the enforcement of national mobile home construction and safety standards.
3. Replace the formerly enacted Industrialized Housing Law with a revised statute for the regulation of manufactured housing other than mobile homes.