

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

M  
R.S.

L.D. 2650

DATE: 4/6/2000

(Filing No. S-649)

**BUSINESS AND ECONOMIC DEVELOPMENT**

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 1059, L.D. 2650, Bill, "An Act to Clarify the Enforcement Authority of the Manufactured Housing Board"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

**Emergency preamble. Whereas,** Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Attorney General has recently opined that the manufactured housing law provides for the preemption of state or other political subdivision codes, standards, rules or regulations under certain circumstances; and

**Whereas,** the Attorney General has also opined that the Manufactured Housing Board has no jurisdiction to enforce those preemptive provisions against state or local political subdivisions; and

**Whereas,** the opinions of the Attorney General indicate a state of affairs whereby no means are available to the State to enforce the preemptive provisions of the manufactured housing law; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of

**COMMITTEE AMENDMENT**

Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 10 MRSA §9001, sub-§2, ¶¶B and E,** as amended by PL 1993, c. 642, §8, are further amended to read:

B. To provide and enforce, with respect to its licensees and political subdivisions, uniform performance standards for construction and installation of manufactured housing that ensure durability and safety of manufactured housing;

E. To require this board to assume responsibilities as consistent with this chapter, including the enforcement of the provisions of this chapter, the administration and enforcement of rules, investigations of complaints and any other acts that are consistent with the purposes of this chapter;

**Sec. 2. 10 MRSA §9011, sub-§4,** as amended by PL 1993, c. 642, §21, is repealed and the following enacted in its place:

**4. Private actions.** The private rights of action created by this subsection are in addition to any rights of enforcement and relief granted to the board in this chapter. The board shall notify all claimants of their right to seek remedy.

A. A person damaged as a result of a violation of this chapter also has a cause of action in court against the person responsible for the manufacture, sale, lease, installation or service, and the court may award appropriate damages and cost for litigation in its judgment.

B. After exhausting all administrative remedies, a person damaged as a result of a violation of section 9042 also has a cause of action in court against the political subdivision of the State that fails to comply with the provisions of section 9042, and the court may award injunctive relief.

**Sec. 3. 10 MRSA §9042, sub-§3,** as amended by PL 1993, c. 642, §27, is further amended to read:

**3. Exemption.** New Notwithstanding the provisions of Title 25, section 2357 and Title 30-A, section 4358, new manufactured housing that is manufactured, sold, installed or serviced in compliance with this chapter is exempt from all state or other political subdivision codes, standards, rules or regulations that

2 regulate the same matters. A building permit or certificate of  
3 occupancy may not be delayed, denied or withheld on account of  
4 any alleged failure of new manufactured housing to comply with  
5 any code, standard, rule or regulation from which the new  
6 manufactured housing is exempt under this subsection.

8 **Sec. 4. 10 MRSA §9042, sub-§§5 and 6** are enacted to read:

10 5. Local enforcement. Except as specifically set forth in  
11 this subsection, a certificate of occupancy for any certified  
12 manufactured housing may not be denied, delayed or withheld on  
13 account of any alleged failure to comply with this chapter or any  
14 building code or rule adopted by the board. For the purposes of  
15 this section, "certified manufactured housing" means new  
16 manufactured housing to which a label, seal or other device has  
17 been affixed, in accordance with rules adopted by the board,  
18 certifying the compliance of the housing with this chapter and  
19 all applicable rules.

20 A. The State or a political subdivision of the State may  
21 deny a certificate of occupancy for any certified  
22 manufactured housing when, in the exercise of reasonable  
23 judgment, the State or the political subdivision of the  
24 State determines that an imminent and direct risk of serious  
25 physical injury or death would exist in the normal use of  
26 the manufactured housing.

28 B. If a certificate of occupancy for certified manufactured  
29 housing is denied, the State or a political subdivision of  
30 the State shall promptly provide the applicant for the  
31 certificate of occupancy with written notice of the denial.  
32 The notice must describe each reason for the denial of the  
33 certificate of occupancy in sufficient detail to allow the  
34 applicant to correct each deficiency noted. The State or a  
35 political subdivision of the State shall simultaneously  
36 provide a copy of the notice to the board.

38 C. If the code enforcement or other inspection officer of  
39 the State or a political subdivision of the State identifies  
40 a failure of certified manufactured housing to comply with  
41 this chapter or any building code or rule adopted by the  
42 board, the officer may file a complaint with the board in  
43 accordance with section 9051.

44 D. This chapter may not be construed to impose a duty on a  
45 code enforcement or other inspection officer of the State or  
46 a political subdivision of the State to inspect any  
47 certified manufactured housing for compliance with this  
48 chapter or any building code or rule adopted by the board.  
49 Unless a certificate of occupancy has been issued pursuant  
50 to this chapter, the State or a political subdivision of the

2 to the provisions of section 9043, subsection 2, paragraph  
4 A, a certificate of occupancy for certified manufactured  
6 housing does not constitute a representation by the State or  
8 a political subdivision of the State that the manufactured  
10 housing meets the standards established under this chapter.

12 **6. Review of denial; issuance of certificate of occupancy.**  
14 Notwithstanding the provisions of Title 25, chapter 313, if a  
16 certificate of occupancy for certified manufactured housing is  
18 denied on account of any alleged failure of the manufactured  
20 housing to comply with this chapter or any building code or rule  
22 adopted by the board or any law, rule, regulation or ordinance  
24 from which the manufactured housing is exempt under this chapter,  
26 the applicant for the certificate of occupancy may petition the  
28 board to review the denial.

30 The board shall issue a certificate of occupancy for the  
32 manufactured housing if, after appropriate notice and  
34 administrative hearing in accordance with Title 5, chapter 375,  
36 subchapter IV, the board determines that:

38 A. The manufactured housing has been certified pursuant to  
40 the rules adopted by the board;

42 B. The certificate of occupancy was not denied pursuant to  
44 subsection 5, paragraph A; and

46 C. The notice of denial issued under subsection 5,  
48 paragraph B does not specify any violation of applicable  
50 law, rule, regulation or ordinance from which the  
manufactured housing is not exempted under this chapter.

A certificate of occupancy issued under this subsection has the  
same validity, force and effect as if issued by the State or a  
political subdivision of the State in which the manufactured  
housing is located.

**Sec. 5. 25 MRSA §2357**, as amended by PL 1989, c. 502, Pt. A,  
§101, is further amended to read:

**§2357. No occupancy without certificate; appeal**

No Subject to the provisions of Title 10, chapter 951, a new  
building may not be occupied until the inspector of buildings has  
given a certificate that the same has been built in accordance  
with section 2353, and so as to be safe from fire. If the owner  
permits it to be so occupied without such certificate, the owner  
shall must be penalized in accordance with Title 30-A, section  
4452. In case the inspector of buildings for any cause declines  
to give that certificate and the builder has in the builder's own

judgment complied with section 2353, an appeal may be taken to the municipal officers and, if on such appeal it shall--be is decided by them that said the section has been complied with, the owner of said the building shall is not be liable to a fine for want of the certificate of the inspector.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the summary the following:

#### FISCAL NOTE

The additional costs associated with reviewing the denial of a certificate of occupancy can be absorbed by the Manufactured Housing Board within the Department of Professional and Financial Regulation utilizing existing budgeted resources.

This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

#### SUMMARY

This amendment clarifies the intent of the original enactment of the manufactured housing law by permitting the Manufactured Housing Board to enforce the preemption provisions of the Maine Revised Statutes, Title 10, section 9042, subsection 3 against municipalities and by allowing a more expansive private right of action in favor of those adversely affected by any violation of the manufactured housing law. It also clarifies the role of municipal code enforcement officers by making it clear that these officers have no obligation to inspect new manufactured housing for violations of the manufactured housing law or the rules adopted pursuant to that law. The amendment provides the Manufactured Housing Board with the authority to review denials of applications for certificates of occupancy in certain limited situations and authorizes the Manufactured Housing Board to issue certificates of occupancy.

The amendment also adds a fiscal note to the bill.