

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1509

S.P. 525

In Senate, March 30, 2005

An Act To Amend the Laws Governing the Manufactured Housing Board

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.
Cosponsored by Representative MILLETT of Waterford and
Representative: HAMPER of Oxford.

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

2
4 **Sec. 1. 10 MRSA §9002, sub-§2**, as repealed and replaced by PL 1981, c. 152, §2, is amended to read:

6 **2. Dealer.** "Dealer" means ~~any a person engaged in the retail-selling or offering-for sale, primarily to a person who, in good faith, purchases these homes for purposes other than~~ offering for sale, brokering or distribution of manufactured homes, to a person who, in good faith, purchases these homes for purposes other than resale housing to a licensed dealer, developer dealer or consumer.

12 **Sec. 2. 10 MRSA §9002, sub-§2-A** is enacted to read:

14 **2-A. Developer dealer.** "Developer dealer" means a person who purchases state-certified manufactured housing from a licensed manufacturer or dealer for placement on property owned by the developer dealer and who offers the manufactured housing for sale to the initial purchaser of the manufactured housing. The developer dealer may not install such manufactured housing but may contract with the manufacturer or dealer for the installation of such manufactured housing.

22 **Sec. 3. 10 MRSA §9002, sub-§6-A**, as enacted by PL 1993, c. 642, §9, is amended to read:

26 **6-A. Installer.** "Installer" means ~~any a person, including but not limited to a dealer or mechanic, who installs or sets up manufactured housing for a buyer~~ engaged in the installation or servicing of state-certified manufactured housing.

30 **Sec. 4. 10 MRSA §9002, sub-§7**, as repealed and replaced by PL 1981, c. 152, §4, is amended to read:

34 **7. Manufactured housing.** "Manufactured housing" means a structural unit or units designed ~~for occupancy, to be used as a dwelling or dwellings~~ and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building ~~which~~ that is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and ~~that~~ that may be purchased ~~or, sold, offered for sale or brokered~~ by a ~~dealer~~ licensee in the interim. For purposes of this Act, 3 types of manufactured housing are included. They are:

46 A. These HUD-code homes, which are those units constructed after June 15, 1976, which that the manufacturer certifies are constructed in compliance with the HUD standard, meaning structures, transportable in one or more sections, ~~which that~~, in the traveling mode, are 8 body feet or more in

2 width and 40 body feet or more in length or, when erected on
3 site, are 320 or more square feet, and which are built on a
4 permanent chassis and designed to be used as dwellings, with
5 or without permanent foundations, when connected to the
6 required utilities, including the plumbing, heating,
7 air-conditioning and electrical systems contained therein;
8 except that such term shall include any structure which that
9 meets all the requirements of this paragraph except the size
10 requirements and with respect to which the manufacturer
11 voluntarily files a certification required by the Secretary
12 of the United States Department of Housing and Urban
13 Development and complies with the standards established
14 under the National Manufactured Housing Construction and
15 Safety Standards Act of 1974, 42 United States Code 5401, et
16 seq;

17 B. These State-certified modular homes, which are those
18 units which that the manufacturer certifies are constructed
19 in compliance with the state's State's Manufactured Housing
20 Act and regulations, meaning structures, transportable in
21 one or more sections, which that are not constructed on a
22 permanent chassis and are designed to be used as dwellings
23 on foundations when connected to required utilities,
24 including the plumbing, heating, air-conditioning or
25 electrical systems contained therein;

26 C. These Pre-HUD-code homes, which are those units
27 constructed prior to June 15, 1976, meaning structures,
28 transportable in one or more sections, which that are 8 body
29 feet or more in width and are 32 body feet or more in
30 length, and which are built on a permanent chassis and
31 designed to be used as dwellings, with or without permanent
32 foundations, when connected to the required utilities,
33 including the plumbing, heating, air-conditioning or
34 electrical systems contained therein.

35 **Sec. 5. 10 MRSA §9002, sub-§8-A** is enacted to read:

36
37 **8-A. Manufacturer's agent.** "Manufacturer's agent" means an
38 individual, not an employee of a manufacturer, who represents one
39 or more manufacturers and who is engaged in the sale, offering
40 for sale, brokering or distribution of HUD-code homes or
41 state-certified manufactured housing to a licensed dealer or
42 developer dealer.

43 **Sec. 6. 10 MRSA §9002, sub-§9,** as amended by PL 1981, c. 152,
44 §5, is further amended to read:

45 **9. Mechanic.** "Mechanic" means ~~any--person--engaged--in~~
46 ~~servicing--or--installing--manufactured--housing,--as--defined--in~~

2 ~~section 9002, subsection 7, paragraphs A and C, for compensation~~
3 ~~and is not a regular employee of a manufacturer or a dealer an~~
4 ~~individual engaged in the installation or servicing of HUD-code~~
5 ~~or pre-HUD-code homes.~~

6 **Sec. 7. 10 MRSA §9006-C, sub-§2**, as enacted by PL 1993, c.
7 642, §15, is amended to read:

8
9 **2. Installer's or mechanic's warranty seal.** Before
10 manufactured housing may be installed in this State, the
11 installer ~~shall~~ or mechanic must obtain from the board a Maine
12 installer's or mechanic's warranty seal and attach the seal to
13 the manufactured housing. The fee to the installer or mechanic
14 for the warranty seal may not exceed \$25.

15 **Sec. 8. 10 MRSA §9006-D**, as enacted by PL 2001, c. 281, §1,
16 is amended to read:

17
18 **§9006-D. Notice of installation**

19
20 **1. Notice of installation.** A manufacturer, manufacturer's
21 agent, dealer, mechanic and installer shall notify the board
22 every month of the installations completed by that person that
23 month. The notice must include the location of each unit of
24 manufactured housing, the owner of each unit at the time of
25 installation, the type or model of the unit, the manufacturer of
26 the unit, written certification that the installation meets
27 standards that conform to those required by the board and the
28 name and address of the manufacturer, manufacturer's agent,
29 dealer, mechanic or installer. The information must be submitted
30 within 10 days after the end of each month in the form and manner
31 prescribed by the board by rule. Rules adopted pursuant to this
32 subsection are routine technical rules as defined in Title 5,
33 chapter 375, subchapter II-A 2-A.

34
35 **2. Failure to file.** The board may require a manufacturer,
36 manufacturer's agent, dealer, mechanic or installer who fails to
37 comply with this section to pay a fine of not less than \$5 and
38 not more than \$100 for each day the notice is late.

39
40 **Sec. 9. 10 MRSA §9008**, as repealed and replaced by PL 1981,
41 c. 152, §10, is amended to read:

42
43 **§9008. Prohibited practices**

44
45 **1. Licenses.** No A person may not manufacture, sell, broker,
46 distribute, install or service any manufactured housing in this
47 State without first obtaining a license from the board as
48 required in this chapter.

49
50

2 **2. Violation of regulations and standards.** No A person may
3 not knowingly manufacture, sell, broker, distribute, install or
4 service manufactured housing in the State that is not in
5 compliance with the regulations and standards authorized under
6 this chapter.

7 **Sec. 10. 10 MRSA §9009, sub-§2**, as amended by PL 1993, c. 642,
8 §16 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is
9 further amended to read:

10 **2. Investigation of complaints; revocation or suspension of**
11 **licenses.** The board shall investigate or cause to be investigated
12 all complaints made to the board and all cases of noncompliance
13 with or violation of this chapter or of a warranty applicable to
14 the manufacture or installation of manufactured housing.
15 Notwithstanding Title 5, section 10051, if the board after notice
16 and a hearing finds that the manufacturer, manufacturer's agent,
17 dealer, developer dealer, installer or mechanic has violated this
18 chapter, the rules adopted pursuant to this chapter or an
19 applicable warranty, the board may file a complaint with the
20 District Court to revoke or suspend the license or approval of
21 the manufacturer, manufacturer's agent, dealer, developer dealer,
22 installer or mechanic. If the board does not find reasonable
23 grounds to believe that a violation of this chapter or breach of
24 an applicable warranty has occurred, the board shall enter an
25 order so finding and dismiss the proceeding. The board, for
26 reasons it considers sufficient, may reissue a license to any
27 person whose license has been revoked if 3 or more members of the
28 board vote in favor of this reissuance.

29 **Sec. 11. 10 MRSA §9009, sub-§3**, as amended by PL 1993, c. 642,
30 §18, is further amended to read:

31 **3. Remedies for manufacturing defects.** The board staff
32 shall investigate all complaints made to the board of
33 noncompliance with or violation of chapter 213 or a warranty
34 applicable to the sale of manufactured housing. If the board
35 finds, after hearing, that a manufacturer ~~or~~, manufacturer's
36 agent, dealer or developer dealer has sold, or is making
37 available for sale, manufactured housing that poses a threat to
38 public health or safety or has failed to comply with chapter 213
39 or an applicable warranty, express or implied, the board may
40 order the manufacturer ~~or~~, manufacturer's agent, dealer or
41 developer dealer or both or any combination thereof to take
42 appropriate corrective action. Corrective action may include,
43 but is not limited to, reimbursing consumers for repairs that are
44 covered by warranty and made by the consumer if the consumer
45 notifies the dealer ~~or~~, developer dealer, manufacturer or
46 manufacturer's agent in writing of the defect within a reasonable
47 time prior to undertaking the repairs and the board finds that
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2 the repairs are or were necessary to correct or prevent an
3 imminent threat to health or safety or to the structure of the
4 manufactured housing. Notwithstanding Title 5, section 10051,
5 the board may also revoke or suspend the license of the
6 manufacturer ~~or, manufacturer's agent, dealer, developer dealer~~
7 or ~~both any combination thereof~~ to prevent any future threat to
8 public health or safety. This subsection applies to any new
9 manufactured housing that is sold to a consumer after January 1,
10 1993.

11 **Sec. 12. 10 MRSA §9009, sub-§4**, as enacted by PL 1993, c. 642,
12 §19, is amended to read:

13 **4. Remedies for installation defects.** The board staff
14 shall investigate all complaints made to the board of
15 noncompliance with or violation of chapter 213 or a warranty
16 applicable to the installation of manufactured housing. If the
17 board finds, after hearing, that the installation of manufactured
18 housing poses a threat to public health or safety or does not
19 comply with the board's installation standards, chapter 213 or
20 any applicable warranty, the board may order the installer to
21 take appropriate corrective action. Corrective action may
22 include, but is not limited to, reimbursing consumers for repairs
23 that are covered by warranty and made by the consumer if the
24 consumer notifies the installer or mechanic in writing of the
25 defect within a reasonable time prior to undertaking the repairs
26 and the board finds that the repairs are or were necessary to
27 correct or prevent an imminent threat to health or safety or to
28 the structure of manufactured housing. Notwithstanding Title 5,
29 section 10051, the board may also revoke or suspend the
30 installer's or mechanic's license to install manufactured housing
31 to prevent any future threat to the public health or safety.
32 This subsection applies to any new manufactured housing that is
33 sold to a consumer after January 1, 1993.

34 **Sec. 13. 10 MRSA §9011, sub-§4, ¶A**, as enacted by PL 1999, c.
35 725, §2, is amended to read:

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

42 **Sec. 14. 10 MRSA §9021, sub-§1**, as amended by PL 1993, c. 642,
43 §23, is further amended to read:

44 **1. Licenses required.** Any person who engages in the
45 business of manufacturing, brokering, distributing, selling,
46 installing or servicing manufactured housing shall first obtain a
47

license issued by the board. The board shall, within a reasonable time, issue a license to any person who intends to manufacture, sell, install or service manufactured housing in this State subject to filing and approval of an application provided by the board. Any person who is licensed to conduct these activities by other state or federal law is exempt from this requirement when the law provides for specific authority to provide a particular service or preempts the requirement for such a license. Active licensees of the Real Estate Commission are exempt from the licensing requirement for selling or brokering used manufactured housing ~~but not from the requirements of this chapter~~ if such housing is sold or offered for sale by a licensee of the board. A manufacturer's agent must provide the board with the names, addresses and license numbers of all licensees that will be represented by the manufacturer's agent.

Sec. 15. 10 MRSA §9021, sub-§2, ¶A, as amended by PL 1991, c. 391, §2, is further amended to read:

A. The license fee for manufacturers of manufactured housing who deliver or sell manufactured housing may not exceed \$200 annually. The license fee for manufacturer's agents may not exceed \$200 annually. Each manufacturing plant that delivers or sells manufactured housing in the State must obtain a separate license.

Sec. 16. 10 MRSA §9021, sub-§2, ¶B, as amended by PL 1993, c. 642, §24, is further amended to read:

B. The license fee for dealers or developer dealers who are engaged in the retail selling, offering for sale, brokering, or distribution of manufactured housing may not exceed \$200 annually.

Sec. 17. 10 MRSA §9021, sub-§2, ¶D, as amended by PL 1991, c. 391, §3, is further amended to read:

D. The additional license fee for dealers, developer dealers, installers or mechanics who have more than one business location may not exceed \$50 annually per additional location.

Sec. 18. 10 MRSA §9021, sub-§6, as enacted by PL 1993, c. 642, §25, is amended to read:

6. Financial responsibility. The board may require bonding or other reasonable methods to ensure that manufacturers, manufacturer's agents, dealers, developer dealers and others licensed under this chapter are financially responsible to fully comply with this chapter.

2 **Sec. 19. 10 MRSA §9021, sub-§8, ¶¶B and C**, as enacted by PL
1993, c. 642, §25, are amended to read:

4
6 B. Accepted manufactured housing, directly or indirectly,
from a manufacturer or a manufacturer's agent not licensed
by the State pursuant to this chapter;

8
10 C. Sold or delivered, directly or indirectly, manufactured
housing to a dealer or developer dealer not licensed by the
State pursuant to this chapter; or

12 **Sec. 20. 10 MRSA §9021, sub-§9**, as enacted by PL 2001, c. 281,
14 §2, is amended to read:

16 **9. Proof of sales tax registration.** The board shall
require that an applicant for a manufacturer ~~or~~ manufacturer's
18 agent, dealer or developer dealer license under this subchapter
demonstrate that the applicant is registered with the State Tax
20 Assessor for the collection of sales and use tax under Title 36,
chapter 211 or that the applicant is not required to register
22 under that chapter.

24 **Sec. 21. 10 MRSA §9022, sub-§2**, as enacted by PL 1977, c. 550,
§1, is amended to read:

26 **2. Manufacturers.** A manufacturer may manufacture or sell to
28 dealers and developer dealers when licensed as a manufacturer of
manufactured housing and may repair defects and is exempt from
30 any licensing requirements of other state or political
subdivision subdivisions.

32 **Sec. 22. 10 MRSA §9022, sub-§5** is enacted to read:

34 **5. Manufacturer's agent.** A manufacturer's agent may
36 represent manufacturers and may engage in the sale, brokering,
offering for sale or distribution of manufactured housing when
38 licensed as a manufacturer's agent and is exempt from any
licensing requirements of other state or political subdivisions.

40 **Sec. 23. 10 MRSA §9042, sub-§3**, as amended by PL 1999, c. 725,
42 §3, is further amended to read:

44 **3. Exemption.** Notwithstanding the provisions of Title 25,
section 2357 and Title 30-A, section 4358, new manufactured
46 housing that is manufactured, brokered, distributed, sold,
installed or serviced in compliance with this chapter is exempt
48 from all state or other political subdivision codes, standards,
rules or regulations that regulate the same matters. A building
50 permit or certificate of occupancy may not be delayed, denied or

2 withheld on account of any alleged failure of new manufactured
3 housing to comply with any code, standard, rule or regulation
4 from which the new manufactured housing is exempt under this
5 subsection.

6 **Sec. 24. 10 MRSA §9045, sub-§2**, as repealed and replaced by PL
7 1991, c. 391, §6, is amended to read:

8
9 **2. Fee for inspection.** A fee, not to exceed the cost of
10 inspection, for inspection of manufactured housing that must be
11 paid by the manufacturer, manufacturer's agent, dealer,
12 ~~distributor, broker~~ developer dealer, installer or mechanic whose
13 actions or failure to act gave rise to the necessity of the
14 inspection.

15 **Sec. 25. 10 MRSA §9046**, as enacted by PL 1981, c. 152, §14,
16 is amended to read:

17 **§9046. Complaint investigation**

18
19 Upon complaint by any person concerning an alleged violation
20 of this chapter, the board shall investigate and determine, or
21 shall cause to be investigated and determined, whether the unit
22 complies with established regulations. The board shall notify the
23 complainant of ~~his~~ the complainant's right to relief under
24 section 9011, subsection 4. If the board determines the defect
25 occurred in other similar manufactured housing, the board shall
26 notify all ascertainable purchasers of the housing, in accordance
27 with the records obtained from the manufacturer and dealer of
28 their possible right of action under this subchapter. Failure of
29 the manufacturer ~~or~~, manufacturer's agent, dealer or developer
30 dealer to retain reasonable business records, or to provide
31 access to those records in response to a request by the board
32 pursuant to this subchapter, ~~shall be considered~~ is a violation
33 of this chapter.

34
35 **Sec. 26. 10 MRSA §9047, sub-§1, ¶A**, as amended by PL 1993, c.
36 642, §28, is further amended to read:

37
38 A. Notification by mail to the first purchaser of the
39 manufactured housing, other than a dealer or developer
40 dealer of the manufacturer, and to any subsequent purchaser
41 whose identity the manufacturer knows;

42
43 **Sec. 27. 10 MRSA §9047, sub-§1, ¶B**, as enacted by PL 1981, c.
44 152, §14, is amended to read:

45
46 B. Notification by mail or some expeditious means to the
47 ~~dealer or~~ dealers and developer dealers of the manufacturer
48 to whom the manufactured housing was delivered; and
49

