

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

D. One representative of private payors who join the council;

E. ~~One or more members~~ member from each of the following publicly funded groups:

(1) The Maine state employees health insurance program, one member representing labor and one member representing management;

(2) The University of Maine System; and

(3) The Maine Community College System;

F. The director of the Governor's Office of Health Policy and Finance or the director's designee or the director of a successor agency;

G. ~~Other Two~~ public purchasers not listed above. ~~Representatives of municipal or county governments, the Maine Education Association's benefits trust, the Maine School Management Association's benefits trust and private purchasers may be allowed to join the council to participate in savings opportunities;~~

H. A health care provider; ~~and~~

I. A clinical pharmacist; and

J. Three consumers of health care services, one of whom represents a statewide organization that advocates for enrollees in a publicly funded health program that includes comprehensive prescription drug benefits.

Public Representatives of municipal or county governments, the Maine Education Association's benefits trust, the Maine School Management Association's benefits trust and other public purchasers not otherwise listed in this subsection and private purchasers may be allowed to join the council as nonvoting members and to participate in savings opportunities.

**4. Duties of council.** The council shall make recommendations to public purchasers regarding the joint purchasing of pharmaceuticals with the State in order to reduce costs for all participating parties and maximize savings by pooling purchasing power, but not to fundamentally alter the independent nature of any of the health plans involved in the council. The council shall coordinate and exchange information among state agencies, stakeholder groups, advisory committees, organizations and task forces looking into options for reducing the cost of prescription drug benefits. Any joint purchasing effort must ensure that:

A. Each of the participating plans retains its distinct nature, with members of each plan main-

taining their current medical coverage and participating organizations retaining current contracts, except for amendments required to implement the joint pharmaceutical purchasing effort;

B. The members of participating plans have open access to all prescription drugs, as medically needed. The council shall design and implement a 3-tiered pharmaceutical benefit;

C. Full coverage of certain drugs is contingent upon satisfaction of clinical criteria;

D. A preferred drug list identifies clinically efficacious high-quality prescription drugs that are also cost-effective; these drugs may not require prior approval. The preferred drug list must to the extent possible be based on MaineCare's preferred drug list and must be advised by MaineCare's clinical drug utilization committee;

E. Administrative efficiencies are realized by pooled purchasing; clinically efficacious, cost-effective drugs are preferred; and rebates are negotiated on behalf of the entire group;

F. Reimbursement for prescription generic drugs ~~are~~ is capped at maximum allowable costs or the MaineCare bid price, whichever is lower;

G. Incentives may be implemented to reward the use of mail order, and community pharmacies ~~will be~~ are given the opportunity to provide medications under the same terms as mail-order pharmacies; and

H. All participating plans share in the savings realized through the pooled purchasing effort.

**Sec. 2. Report.** By February 1, 2006, the Pharmaceutical Cost Management Council established in the Maine Revised Statutes, Title 5, section 2031 shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding its work and findings with regard to cost containment tools, including, but not limited to, academic detailing and evidence-based prescribing.

See title page for effective date.

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## CHAPTER 344

S.P. 525 - L.D. 1509

### An Act To Amend the Laws Governing the Manufactured Housing Board

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

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

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

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

**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.

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

**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.~~

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

**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~~ 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:

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

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

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

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

**9. Mechanic.** "Mechanic" means ~~any person engaged in servicing or installing manufactured housing, as defined in section 9002, subsection 7, paragraphs A and C, for compensation and is not a regular employee of a manufacturer or a dealer an individual engaged in the installation or servicing of HUD-code or pre-HUD-code homes.~~

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

**2. Installer's or mechanic's warranty seal.** Before manufactured housing may be installed in this

State, the installer ~~shall~~ or mechanic must obtain from the board a Maine installer's or mechanic's warranty seal and attach the seal to the manufactured housing. The fee to the installer or mechanic for the warranty seal may not exceed \$25.

**Sec. 7. 10 MRSA §9008**, as repealed and replaced by PL 1981, c. 152, §10, is amended to read:

**§9008. Prohibited practices**

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

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

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

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

**Sec. 9. 10 MRSA §9009, sub-§3**, as amended by PL 1993, c. 642, §18, is further amended to read:

**3. Remedies for manufacturing defects.** The board staff shall investigate all complaints made to the board of noncompliance with or violation of chapter 213 or a warranty applicable to the sale of manufactured housing. If the board finds, after hearing, that a manufacturer ~~or~~, dealer or developer dealer has sold,

or is making available for sale, manufactured housing that poses a threat to public health or safety or has failed to comply with chapter 213 or an applicable warranty, express or implied, the board may order the manufacturer ~~or~~, dealer or developer dealer or ~~both~~ any combination thereof to take appropriate corrective action. Corrective action may include, but is not limited to, reimbursing consumers for repairs that are covered by warranty and made by the consumer if the consumer notifies the dealer ~~or~~, developer dealer or manufacturer in writing of the defect within a reasonable time prior to undertaking the repairs and the board finds that the repairs are or were necessary to correct or prevent an imminent threat to health or safety or to the structure of the manufactured housing. Notwithstanding Title 5, section 10051, the board may also revoke or suspend the license of the manufacturer ~~or~~, dealer, developer dealer or ~~both~~ any combination thereof to prevent any future threat to public health or safety. This subsection applies to any new manufactured housing that is sold to a consumer after January 1, 1993.

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

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

**Sec. 11. 10 MRSA §9011, sub-§4, ¶A**, as enacted by PL 1999, c. 725, §2, is amended to read:

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, brokering, distribution, sale, lease, installation or service, and the court may award

appropriate damages and cost for litigation in its judgment.

**Sec. 12. 10 MRSA §9021, sub-§1,** as amended by PL 1993, c. 642, §23, is further amended to read:

**1. Licenses required.** Any person who engages in the business of manufacturing, brokering, distributing, selling, installing or servicing manufactured housing shall first obtain a 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 and new manufactured housing if such housing is sold or offered for sale by a licensee of the board.

**Sec. 13. 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. 14. 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. 15. 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, dealers, developer dealers and others licensed under this chapter are financially responsible to fully comply with this chapter.

**Sec. 16. 10 MRSA §9021, sub-§8, ¶C,** as enacted by PL 1993, c. 642, §25, is amended to read:

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

**Sec. 17. 10 MRSA §9021, sub-§9,** as enacted by PL 2001, c. 281, §2, is amended to read:

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

**Sec. 18. 10 MRSA §9022, sub-§2,** as enacted by PL 1977, c. 550, §1, is amended to read:

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

**Sec. 19. 10 MRSA §9042, sub-§3,** as amended by PL 1999, c. 725, §3, is further amended to read:

**3. Exemption.** Notwithstanding the provisions of Title 25, section 2357 and Title 30-A, section 4358, new manufactured housing that is manufactured, brokered, distributed, sold, installed or serviced in compliance with this chapter is exempt from all state or other political subdivision codes, standards, rules or regulations that regulate the same matters. A building permit or certificate of occupancy may not be delayed, denied or withheld on account of any alleged failure of new manufactured housing to comply with any code, standard, rule or regulation from which the new manufactured housing is exempt under this subsection.

**Sec. 20. 10 MRSA §9045, sub-§2,** as repealed and replaced by PL 1991, c. 391, §6, is amended to read:

**2. Fee for inspection.** A fee, not to exceed the cost of inspection, for inspection of manufactured housing that must be paid by the manufacturer, dealer, ~~distributor, broker~~ developer dealer, installer or mechanic whose actions or failure to act gave rise to the necessity of the inspection.

**Sec. 21. 10 MRSA §9046,** as enacted by PL 1981, c. 152, §14, is amended to read:

#### **§9046. Complaint investigation**

Upon complaint by any person concerning an alleged violation of this chapter, the board shall investigate and determine, or shall cause to be investigated and determined, whether the unit complies with established regulations. The board shall notify the complainant of ~~his~~ the complainant's right to relief under section 9011, subsection 4. If the board

determines the defect occurred in other similar manufactured housing, the board shall notify all ascertainable purchasers of the housing, in accordance with the records obtained from the manufacturer and dealer of their possible right of action under this subchapter. Failure of the manufacturer ~~or~~ dealer or developer dealer to retain reasonable business records; or to provide access to those records in response to a request by the board pursuant to this subchapter, ~~shall be considered~~ is a violation of this chapter.

**Sec. 22. 10 MRSA §9047, sub-§1, ¶A**, as amended by PL 1993, c. 642, §28, is further amended to read:

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

**Sec. 23. 10 MRSA §9047, sub-§1, ¶B**, as enacted by PL 1981, c. 152, §14, is amended to read:

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

**Sec. 24. 10 MRSA §9051, sub-§3**, as enacted by PL 1993, c. 642, §30, is amended to read:

**3. Notice for purposes of limitation of actions.** If a consumer files a written complaint with the manufacturer, dealer, developer dealer, installer, mechanic or board within one year and 10 days after installation of new manufactured housing, receipt of the written complaint by the manufacturer, dealer, developer dealer, installer, mechanic or board tolls the statute of limitations for purposes of bringing an action to enforce any applicable warranty concerning the defect that is the subject of the written complaint.

See title page for effective date.

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## CHAPTER 345

H.P. 403 - L.D. 548

### An Act To Enhance the Prosecution of Child Pornography Cases

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

**Sec. 1. 17-A MRSA §284, sub-§1, ¶A**, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

A. Intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

(1) The other person has not in fact attained ~~14~~ 16 years of age; or

(2) The person knows or has reason to know that the other person has not attained ~~14~~ 16 years of age;

Violation of this paragraph is a Class D crime;

**Sec. 2. 17-A MRSA §284, sub-§§3 and 4**, as enacted by PL 2003, c. 711, Pt. B, §12, are amended to read:

**3.** The age of the person depicted and that the person depicted is an actual person may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age and authenticity of the person depicted.

**4.** Any material that depicts a person who has not attained ~~14~~ 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

See title page for effective date.

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## CHAPTER 346

H.P. 652 - L.D. 933

### An Act To Amend the Maine Life and Health Insurance Guaranty Association Act

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

**Sec. 1. 24-A MRSA §§4601 and 4602**, as enacted by PL 1983, c. 846, are amended to read:

#### §4601. Short title

This chapter ~~shall~~ may be known and cited as the Maine Life and Health Insurance Guaranty Association Act.

#### §4602. Purpose

The purpose of this chapter, subject to certain limitations, is to maintain public confidence in the promises of insurers by providing a mechanism for