S T A T E O F N E W Y O R K

1210

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, JOHN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing for the certification and training of persons employed in the manufacture, sale, installation and repair of modular homes and establishing dispute resolution procedures in the modular home industry

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 21-B of the executive law, as added by chapter 729 of the laws of 2005, is amended to read as follows:

ARTICLE 21-B

MANUFACTURED AND MODULAR HOMES

Section 600. Application.
601. Definitions.
602. Certification required.
603. Warranty seals; notice to the department.
604. Powers of the department.
605. Resolution of disputes regarding manufactured AND MODULAR homes.
606. Training and continuing education.
607. Penalties for violation of this article.
608. Fees.
609. State administrative agency requirements.
610. State certified installers.
611. Manufactured AND MODULAR housing advisory council.
612. Powers and duties of the advisory council.

S 600. Application. This article shall be applicable to persons and business entities engaged in the manufacture, sale, installation and service of manufactured OR MODULAR homes and to purchasers thereof.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03770-01-9

S 601. Definitions. For the purposes of this article the following terms shall have the following meanings:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

2. "Delivered condition" means the physical condition of the home after delivery and installation at the home site has been completed.

3. "Department" means the department of state.

4. "Installation" means:

(a) the affixation of a manufactured OR MODULAR home to a foundation or supports at a building site;

(b) the assembly and fastening of structural components of manufactured OR MODULAR housing, including the completed roof system; and

(c) the connection to electrical, oil, water, gas, sewage and similar systems that are necessary for the use of the manufactured OR MODULAR home for dwelling purposes.

5. "Installer" means any person or business entity, including, but not limited to, a retailer or mechanic, who installs or sets up a manufactured OR MODULAR home for a buyer.

6. "Lending entity" means a financial institution, mortgage lender or other individual or entity that holds a mortgage or other security interest in a manufactured OR MODULAR home, such home being the subject of a complaint filed with the department pursuant to the provisions of this article.

7. "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, 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. The term shall include any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States code; and except that such term shall not include any self-propelled recreational vehicle.

8. "Manufacturer" means any person or business entity engaged in manufacturing or producing manufactured OR MODULAR homes.

9. "Mechanic" means any person or business entity engaged in the business of performing service on or installing manufactured OR MODULAR housing.

10. "Retailer" means any person or business entity engaged in the retail selling or offering for sale, brokering or distribution of manufactured OR MODULAR homes, primarily to a person who, in good faith, purchases these homes for purposes other than resale.

11. "Secretary" means the secretary of state.

12. "Service" means the modification, alteration or repair of the structural systems of a manufactured OR MODULAR home.

13. "State administrative agency" or "SAA" means the department of state which has been approved to carry out the state plan and enforce the national manufactured housing construction and safety standards act (42 USC 5401, et seq.) within the state of New York, and that office within the department of state that has been designated by the secretary to perform such duties.

14. "Advisory council" shall mean the manufactured AND MODULAR housing advisory council.

15. "MODULAR HOME" MEANS ANY BUILDING OR CLOSED CONSTRUCTION, REGARDLESS OF TYPE OF CONSTRUCTION OR OCCUPANCY CLASSIFICATION, OTHER THAN A MOBILE OR MANUFACTURED HOME, CONSTRUCTED OFF-SITE IN ACCORDANCE WITH THE APPLICABLE CODES, AND TRANSPORTED TO THE POINT OF USE FOR INSTALLATION OR ERECTION.

S 602. Certification required. 1. On and after July first, two thousand six, no person or business entity shall manufacture, including the manufacture outside the state of New York for sale into the state of New York, sell, install or service any manufactured home in the state of New York, unless such person or business entity has obtained the appropriate certification from the department pursuant to this article. ON AND AFTER JULY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SECTION, NO PERSON OR BUSINESS ENTITY SHALL MANUFACTURE, INCLUDING THE MANUFACTURE OUTSIDE THE STATE OF NEW YORK FOR SALE INTO THE STATE OF NEW YORK, SELL, INSTALL OR SERVICE ANY MODULAR HOME IN THE STATE OF NEW YORK, UNLESS SUCH PERSON OR BUSINESS ENTITY HAS OBTAINED THE APPROPRIATE CERTIFICATION FROM THE DEPARTMENT PURSUANT TO THIS ARTICLE.

2. On and after July first, two thousand six, no manufactured home shall be installed or serviced unless at least one person certified by the department to perform such work is present at the home site during the installation or service. ON AND AFTER JULY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SECTION, NO MODULAR HOME SHALL BE INSTALLED OR SERVICED UNLESS AT LEAST ONE PERSON CERTIFIED BY THE DEPARTMENT TO PERFORM SUCH WORK IS PRESENT AT THE HOME SITE DURING THE INSTALLATION OR SERVICE.

3. a. Each manufacturing plant that delivers or sells manufactured OR MODULAR homes in this state, each retail sales location and each business entity selling, installing or performing service on manufactured OR MODULAR homes must be separately certified.

b. Each manufacturer, retailer, installer and mechanic shall employ at least one person who has been certified by the department.

4. Manufacturers approved to construct manufactured OR MODULAR homes by the United States department of housing and urban development shall be required to apply for, and obtain, certification pursuant to this article. Any such manufacturer shall be deemed to meet the requirements for certification under this article, except that the department may, after a hearing, suspend or revoke the certification of any manufacturer as provided in subdivision seven of section six hundred four of this article.

S 603. Warranty seals; notice to the department. 1. Before a manufactured OR MODULAR home may be installed in this state, the manufacturer shall obtain from the department a New York state manufacturer's warranty seal and attach the seal to the manufactured OR MODULAR home in the manner to be prescribed by the department.

2. Before a manufactured OR MODULAR home may be installed in this state, the installer shall obtain from the department a New York state installer's warranty seal and attach the seal to the manufactured OR MODULAR home in the manner prescribed by the department.

3. On a quarterly basis, every installer shall report to the department all installations completed by that person or business entity during the designated reporting period. The report shall be on a form provided by the department and must include the location of each unit of manufactured OR MODULAR housing, the owner of each unit at the time of

installation, the type or model of the unit, the manufacturer of the unit, written certification that the installation meets the standards of the New York state uniform fire prevention and building code and the name and address of the manufacturer, retailer, mechanic or installer completing the notice.

S 604. Powers of the department. The department shall have the following powers and duties with respect to manufactured AND MODULAR housing:

1. To create and maintain a registry accessible to the public which shall include, but not be limited to the following information:

(a) a listing of certified manufacturers, retailers, installers and mechanics of manufactured OR MODULAR homes; and

(b) records of all violations issued, disciplinary action taken and penalties paid and levied pursuant to this article;

2. To retain records and all application materials submitted to it;

3. To receive complaints, conduct investigations and establish procedures for the resolution of disputes relating to the construction, installation, or servicing of manufactured OR MODULAR homes and to resolve such complaints and disputes pursuant to section six hundred five of this article;

4. To establish administrative procedures for processing applications for certification of persons and business entities required to be certified pursuant to this article; to receive such applications; to approve or disapprove applications for certifications; and to issue certificates;

5. To promulgate rules and regulations relating to the provisions of this article;

6. To conduct adjudicatory hearings, pursuant to the state administrative procedure act to resolve violations of this article and the rules and regulations promulgated thereunder;

7. To suspend and revoke certificates, and impose such other penalties as may be authorized pursuant to this article. The department may revoke or suspend the certification of a person or business entity certified pursuant to this article for a substantial violation of this article, or for a material misstatement in the application for such certification, or if such person or business entity is guilty of fraud or fraudulent practices, or of dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to conduct the certified activity or fails to comply with a decision issued pursuant to section six hundred five of this article;

8. To seek injunctive relief in the supreme court in the county where the complainant resides;

9. To promulgate rules and regulations establishing the standards for certification of manufacturers, retailers, installers and mechanics pursuant to this article. In establishing such standards, the department shall provide for minimum requirements of experience and education as may be necessary to protect the public interest. Such standards shall also include a requirement for initial training of installers and mechanics seeking certification by the department. In establishing standards, the department shall recognize certifications or licenses obtained in other states without requiring additional initial educational testing, provided that the requirements for certification or licensing in such other states are comparable to the requirements for certification in the state of New York and provided further, that the individual or entity seeking certification otherwise meets the qualifications for certification in the state of New York;

10. To promulgate rules and regulations to require bonding, minimum capital requirements or other reasonable methods to ensure that manufacturers, retailers, installers and mechanics are financially responsible to fully comply with this article and have the financial resources to meet their warranty, contractual and other obligations. In connection therewith, the department may require the posting of surety bonds to ensure the satisfactory completion of the installation or service; and

11. a. To promulgate rules and regulations regarding the development and approval of courses and seminars required for original certification and to establish requirements for continuing education for persons certified pursuant to this article. Such regulations shall at a minimum require that certified installers and mechanics attend courses and seminars relating to the proper methods of installation and servicing manufactured OR MODULAR homes not less than once every three years.

b. Instructional services for courses leading to original certification or qualifying for continuing education may be provided either by the department, a private trade association or other entity which has been approved as an instructional provider by the department and has paid the appropriate fee prescribed by rules and regulations promulgated under this section. Approved instructional providers shall be permitted to charge a fee for such services, not to exceed the maximum amount prescribed by the rules and regulations. Persons electing to have the continuing education instructional services provided by the department, shall pay for such services in accordance with fee schedules established by the department.

c. Fees charged by the department for approving or providing instructional services shall be deposited in the department account established pursuant to section six hundred eight of this article.

12. To create and maintain a consumer awareness pamphlet, in conjunction with the advisory council, to include, but not be limited to, detailing the certification process, installer selection rights, the dispute resolution process, the differences between the types of housing, and other consumer protection issues. Such pamphlet shall be available to the public, and published on the department's website.

S 605. Resolution of disputes regarding manufactured AND MODULAR homes. 1. Any homeowner, retailer, manufacturer, installer, mechanic or lending entity may file a complaint with the department as a state administrative agency seeking resolution of an allegation that a substantial defect exists in the delivered condition, installation, service or construction of a manufactured OR MODULAR home. The department shall promulgate forms for such complaints which forms shall also be available on the department's [web-site] WEBSITE. For the purpose of this article, a substantial defect shall be a defect or a number of defects or other conditions which collectively can reasonably be expected to cost five hundred dollars or more to cure.

2. Complaints relating to the delivered condition, installation, service or construction of a manufactured OR MODULAR home shall be made within one year and ten days after the date of the service, installation or issuance of a certificate of occupancy, or the expiration of any applicable provision of a contract or warranty, whichever is later.

3. (a) Upon the department's determination that a complaint, on its face, alleges a substantial defect in the delivered condition, installation, service, or construction of a manufactured OR MODULAR home, the department shall notify the homeowner, manufacturer, retailer, mechanic and installer, as appropriate.

(b) Initially, the department may attempt to informally resolve the complaint. If informal resolution of the complaint is unsuccessful, the department shall resolve such complaints and disputes by administrative hearing, pursuant to the state administrative procedure act.

(c) The decision shall provide compensation to the aggrieved party in an amount which shall include, but not be limited to:

(i) Filing and recording fees, inspection fees and other required costs that the aggrieved party would not have incurred had the home met applicable standards; and

(ii) The cost of conforming repairs or replacements.

(d) The department may apportion liability between two or more parties or business entities where appropriate.

(e) The decision resolving the complaint shall be in writing and shall provide the reason therefor, a copy of the decision shall be provided to all interested parties.

(f) The department may require, as a condition of receiving and retaining any certification pursuant to this article, that an applicant agrees to submit to the jurisdiction of the department in connection with the resolution of complaints and disputes and agrees to be bound by the department's determination subject to any administrative and judicial review provided for in this article.

(g) Any party may seek judicial review of the administrative determination pursuant to article seventy-eight of the civil practice law and rules.

S 606. Training and continuing education. 1. Beginning January first, two thousand six, all persons certified as an installer or mechanic, must obtain initial training, including, but not limited to the standards for proper installation of a manufactured home. BEGINNING JANUARY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH AMENDED THIS SECTION, ALL PERSONS CERTIFIED AS AN INSTALLER OR MECHANIC, MUST OBTAIN INITIAL TRAINING, INCLUDING, BUT NOT LIMITED TO THE STANDARDS FOR PROPER INSTALLATION OF A MODULAR HOME. Such training shall be provided in courses and seminars approved pursuant to this article.

2. All persons certified under this article shall be required to attend continuing education courses and seminars not less than once every three years.

S 607. Penalties for violation of this article. Any person or business entity found guilty, after a hearing, of a violation of this article, except for the provisions of section six hundred nine of this article, may be required to pay a civil penalty of not more than one thousand dollars for each such violation, but not more than five thousand dollars for more than one violation relating to each home. Such fine shall be collected and deposited in the state's general fund. In addition to the penalties set forth in this section, the secretary shall also have the power to suspend or revoke licenses pursuant to section six hundred four of this article.

S 608. Fees. The department shall, by regulation, establish reasonable fees for obtaining certification, obtaining warranty and installation seals and for instructional services, training and continuing education pursuant to this article. Such fees shall be paid and deposited into a segregated account established within the department which shall be used exclusively to defray the administrative expenses associated with carrying out the provisions of this article.

S 609. State administrative agency requirements. 1. In carrying out its responsibilities and obligations pursuant to 42 USC 5401, et seq.,

the department, by authorized representatives, may enter, at reasonable times, any factory, warehouse or establishment in which manufactured OR MODULAR housing is manufactured, stored, or held for sale for the purpose of ascertaining whether the requirements of the federal manufactured housing construction and safety standards act, the provisions of this article and the rules of the department are being met. The department's authority to enter and inspect shall be no less than the authority provided in 42 USC 5413.

2. Each manufacturer and retailer of manufactured OR MODULAR housing constructed under the federal standards and any other party or entity covered by chapter 10 of title 42 of the United States Code shall be subject to and comply with all applicable provisions of said laws any violation of which shall be deemed a violation of this section.

3. The department by authorized representative, shall have all of the powers granted to the secretary of housing and urban development as provided in chapter 10 of title 42 of the United States Code with respect to the enforcement of manufactured home safety and construction standards promulgated under 42 USC 5403.

4. The department is authorized to impose and collect fees to be paid by manufacturers in amounts adequate to cover the costs of inspections conducted pursuant to the provisions of this article. Such fees shall be deposited in the department account established pursuant to section six hundred eight of this article.

5. (a) A manufacturer or retailer of manufactured OR MODULAR housing who violates any of the provisions set forth in this section relating to manufactured OR MODULAR housing or rules adopted by the department, including provisions of the New York state uniform fire prevention and building code relating to manufactured OR MODULAR housing, is subject to a civil penalty not to exceed one thousand one hundred dollars for each violation. Each violation constitutes a separate violation with respect to each manufactured OR MODULAR housing unit, except that the maximum penalty may not exceed one million one hundred thousand dollars for any related series of violations occurring within one year from the date of the first violation.

(b) An individual or a director, officer, or agent of a corporation or a principal [on] OF a business entity who knowingly and willfully violates 42 USC 5409 in a manner which threatens the health or safety of any purchaser shall be fined not more than one thousand dollars or imprisoned not more than one year or both.

(c)(i) The department may enforce the provisions of this article and may impose civil penalties administratively;

(ii) Nothing in this article shall limit the powers and duties of the attorney general, as defined in section sixty-three of this chapter; and

(iii) Nothing in this article shall diminish or limit any other right or cause of action existing under any other provision of law.

S 610. State certified installers. Manufacturers and retailers may as a condition of the sale of a manufactured OR MODULAR home require that the home be installed by a state certified installer and may recommend a particular installer or installers. Manufacturers shall not void a warranty for a manufactured OR MODULAR home if the [home buyer] HOMEBUYER utilizes a state certified installer. It shall be a violation of this article to restrict a homebuyer from using any state certified installer chosen by the homebuyer, or to void a warranty for a manufactured OR MODULAR home if the homebuyer utilizes a state certified installer.

S 611. Manufactured AND MODULAR housing advisory council. 1. There is hereby established within the department a manufactured AND MODULAR

housing advisory council. The advisory council shall consist of fifteen members to be appointed as follows:

a. Four members shall be appointed by the governor; one of whom shall be a member, officer, or employee of an installer, one of whom shall be a member, officer, or employee of a park residence advocacy association, one of whom shall be a member, officer, or employee of a retailer, and one of whom shall be a member, officer, or employee of a trade association representing the manufactured OR MODULAR home industry.

b. Four members shall be appointed by the temporary president of the senate; one of whom shall be a member, officer, or employee of a manufacturer, one of whom shall be a member, officer, or employee of the engineering industry involved in manufactured OR MODULAR housing issues, one of whom shall be a member, officer, or employee of a consumer advocacy association involved in manufactured OR MODULAR housing issues, and one of whom shall be a manufactured OR MODULAR housing resident owner.

c. Four members shall be appointed by the speaker of the assembly; one of whom shall be a member, officer, or employee of a manufacturer, one of whom shall be a member, officer, or employee of the banking industry involved in manufactured OR MODULAR housing issues, one of whom shall be a member, officer, or employee of a consumer advocacy association involved in manufactured OR MODULAR housing issues, and one of whom shall be a manufactured OR MODULAR housing resident owner.

d. One member shall be appointed by the minority leader of the senate; who shall be a manufactured OR MODULAR home resident owner.

e. One member shall be appointed by the minority leader of the assembly; who shall be a manufactured OR MODULAR home resident owner.

2. The secretary shall be a member of the advisory council and shall serve as chair to the council.

S 612. Powers and duties of the advisory council. The advisory council shall have the following functions, powers, and duties:

1. To assist in the development of certification requirements and fees, warranty seal requirements and fees, and warranty standards for manufacturers and installers;

2. To assist in the development of training and continuing education requirements;

3. To assist in the creation of a consumer awareness pamphlet detailing the certification process and resolution of dispute process. The pamphlet shall also explain the differences between types of houses (mobile, modular and manufactured);

4. To examine consumer protection issues, including but not limited to, manufactured AND MODULAR housing financing and sales practices;

5. To examine the differences of manufactured and modular housing regulations and make recommendations to the department and the legislature on an annual basis; and

6. To submit annual reports by December thirty-first, two thousand six and each year thereafter, to the governor, the temporary president of the senate and the speaker of the assembly that details the recommendations of the advisory council regarding manufactured AND MODULAR housing in New York state. The advisory council shall, as part of its report, detail the number of complaints received by the department and the number of disputes resolved through the department.

S 2. This act shall take effect January 1 next succeeding the date on which it shall have become a law, provided that the department of state shall immediately be authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of this act on such effective date.