

S. 3223--A

A. 4112--A

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

January 31, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE, COOK, JAFFEE, MONTESANO, SWEENEY -- Multi-Sponsored by -- M. of A. BRENNAN -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

3 ARTICLE 21-B

4 MANUFACTURED AND MODULAR HOMES

5 Section 600. Application.

6 601. Definitions.

7 602. Certification required.

8 603. Warranty seals; notice to the department.

9 604. Powers of the department.

10 605. Resolution of disputes regarding manufactured AND MODULAR
11 homes.

12 606. Training and continuing education.

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

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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.

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.

1 11. "Secretary" means the secretary of state.

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

4 13. "State administrative agency" or "SAA" means the department of
5 state which has been approved to carry out the state plan and enforce
6 the national manufactured housing construction and safety standards act
7 (42 USC 5401, et seq.) within the state of New York, and that office
8 within the department of state that has been designated by the secretary
9 to perform such duties.

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

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

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

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

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

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

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

53 S 603. Warranty seals; notice to the department. 1. Before a manufac-
54 tured OR MODULAR home may be installed in this state, the manufacturer
55 shall obtain from the department a New York state manufacturer's warran-

1 ty seal and attach the seal to the manufactured OR MODULAR home in the
2 manner to be prescribed by the department.

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

7 3. On a quarterly basis, every installer shall report to the depart-
8 ment all installations completed by that person or business entity
9 during the designated reporting period. The report shall be on a form
10 provided by the department and must include the location of each unit of
11 manufactured OR MODULAR housing, the owner of each unit at the time of
12 installation, the type or model of the unit, the manufacturer of the
13 unit, written certification that the installation meets the standards of
14 the New York state uniform fire prevention and building code and the
15 name and address of the manufacturer, retailer, mechanic or installer
16 completing the notice.

17 S 604. Powers of the department. The department shall have the follow-
18 ing powers and duties with respect to manufactured AND MODULAR housing:

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

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

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

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

26 3. To receive complaints, conduct investigations and establish proce-
27 dures for the resolution of disputes relating to the construction,
28 installation, or servicing of manufactured OR MODULAR homes and to
29 resolve such complaints and disputes pursuant to section six hundred
30 five of this article;

31 4. To establish administrative procedures for processing applications
32 for certification of persons and business entities required to be certi-
33 fied pursuant to this article; to receive such applications; to approve
34 or disapprove applications for certifications; and to issue certif-
35 icates;

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

38 6. To conduct adjudicatory hearings, pursuant to the state administra-
39 tive procedure act to resolve violations of this article and the rules
40 and regulations promulgated thereunder;

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

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

53 9. To promulgate rules and regulations establishing the standards for
54 certification of manufacturers, retailers, installers and mechanics
55 pursuant to this article. In establishing such standards, the department
56 shall provide for minimum requirements of experience and education as

1 may be necessary to protect the public interest. Such standards shall
2 also include a requirement for initial training of installers and
3 mechanics seeking certification by the department. In establishing stan-
4 dards, the department shall recognize certifications or licenses
5 obtained in other states without requiring additional initial educa-
6 tional testing, provided that the requirements for certification or
7 licensing in such other states are comparable to the requirements for
8 certification in the state of New York and provided further, that the
9 individual or entity seeking certification otherwise meets the quali-
10 fications for certification in the state of New York;

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

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

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

36 c. Fees charged by the department for approving or providing instruc-
37 tional services shall be deposited in the department account established
38 pursuant to section six hundred eight of this article.

39 12. To create and maintain a consumer awareness pamphlet, in conjunc-
40 tion with the advisory council, to include, but not be limited to,
41 detailing the certification process, installer selection rights, the
42 dispute resolution process, the differences between the types of hous-
43 ing, and other consumer protection issues. Such pamphlet shall be avail-
44 able to the public, and published on the department's website.

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

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

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

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

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

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

20 (ii) The cost of conforming repairs or replacements.

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

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

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

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

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

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

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

1 power to suspend or revoke licenses pursuant to section six hundred four
2 of this article.

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

10 S 609. State administrative agency requirements. 1. In carrying out
11 its responsibilities and obligations pursuant to 42 USC 5401, et seq.,
12 the department, by authorized representatives, may enter, at reasonable
13 times, any factory, warehouse or establishment in which manufactured OR
14 MODULAR housing is manufactured, stored, or held for sale for the
15 purpose of ascertaining whether the requirements of the federal manufac-
16 tured housing construction and safety standards act, the provisions of
17 this article and the rules of the department are being met. The depart-
18 ment's authority to enter and inspect shall be no less than the authori-
19 ty provided in 42 USC 5413.

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

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

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

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

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

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

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

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

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

10 S 611. Manufactured AND MODULAR housing advisory council. 1. There is
11 hereby established within the department a manufactured AND MODULAR
12 housing advisory council. The advisory council shall consist of fifteen
13 members to be appointed as follows:

14 a. Four members shall be appointed by the governor; one of whom shall
15 be a member, officer, or employee of an installer, one of whom shall be
16 a member, officer, or employee of a park residence advocacy association,
17 one of whom shall be a member, officer, or employee of a retailer, and
18 one of whom shall be a member, officer, or employee of a trade associ-
19 ation representing the manufactured OR MODULAR home industry.

20 b. Four members shall be appointed by the temporary president of the
21 senate; one of whom shall be a member, officer, or employee of a
22 manufacturer, one of whom shall be a member, officer, or employee of the
23 engineering industry involved in manufactured OR MODULAR housing issues,
24 one of whom shall be a member, officer, or employee of a consumer advo-
25 cacy association involved in manufactured OR MODULAR housing issues, and
26 one of whom shall be a manufactured OR MODULAR housing resident owner.

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

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

36 e. One member shall be appointed by the minority leader of the assem-
37 bly; who shall be a manufactured OR MODULAR home resident owner.

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

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

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

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

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

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

53 5. To examine the differences of manufactured and modular housing
54 regulations and make recommendations to the department and the legisla-
55 ture on an annual basis; and

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

8 S 2. This act shall take effect on the first of January next succeed-
9 ing the date on which it shall have become a law, provided that the
10 department of state shall immediately be authorized and empowered to
11 take such steps, including the promulgation of rules and regulations, as
12 may be necessary for the proper implementation of this act on such
13 effective date.