

## CHAPTER 234

AN ACT concerning the delivery of building materials and amending P.L.1968, c.222.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1968, c.222 (C.51:4-23) is amended to read as follows:

C.51:4-23 Definitions.

1. As used in this act:

"Building materials" means lumber, wood and wood product materials regulated by the Superintendent of the Office of Weights and Measures pursuant to section 5 of P.L.1968, c.222 (C.51:4-27) and used in connection with the construction, fabrication and erection of residential, utility or business premises.

"Consumer" means any person who purchases building materials for incorporation into any type of structure.

"Dealer" means "equipped dealer" or "unequipped dealer."

"Deputy superintendent" means the deputy superintendent of the Office of Weights and Measures in the Division of Consumer Affairs in the Department of Law and Public Safety.

"Delivery," "deliver" or "delivered," except as otherwise in this act specifically provided, means transportation of building materials for sale or use in this State to a consumer by a dealer in vehicles owned, leased or rented by him.

"Delivery ticket" means any printed or electronic system that provides for: (1) (a) tickets serially numbered and used only in consecutive order; or (b) tickets with a unique identification of each transaction associated with that ticket only if the system of unique identification is established in such a manner that the Office of Weights and Measures may readily determine compliance with section 6 of P.L.1968, c.222 (C.51:4-28); (2) a means of providing the consumer with a copy of the delivery ticket; (3) a means by which the delivery ticket shall be readily available for inspection while materials are in transit and after delivery; and (4) a means of maintaining a copy of the ticket for a period of two years from the date of issuance of the ticket. A record of delivery tickets shall be available for inspection and audit by the Office of Weights and Measures.

"Engaging in business," "engage in business" or "engaged in business" shall include any single transaction, act or sale.

"Equipped dealer" means any person who is regularly engaged in the business of selling or selling and delivering building materials to consumers in this State and who maintains unloading or loading, storage, transportation, communication, sales, services or other facilities therefor, with an office accessible to the public with a competent person on duty, commensurate with the nature and other requirements of the business and an "unequipped dealer" means any person who is regularly engaged in the business of selling building materials at retail in this State to consumers in this State who does not maintain loading, unloading or storage facilities.

"Labeling" means all labels and other written, printed, branded, or graphic matter upon any building materials or accompanying such building materials.

"Lumber" means the wood obtained from the felling, trimming and working up of all kinds and types of trees for use as a structural material.

"Office" means the Office of Weights and Measures in the Division of Consumer Affairs in the Department of Law and Public Safety.

"Wood products" mean any product derived from trees as a result of any work or manufacturing process upon the same primarily intended for use as a building material.

"Mislabeled" or "misbranded" shall be deemed to mean the labeling is misleading, deceiving, or tends to be misleading or deceiving in any particular, and there shall also be taken into account, among other things, not only the representations made or suggested by any statement, word, design, or any combination thereof, but also the extent to which such labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of such building materials, to which such labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

"Misrepresentation" means any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts.

"Offered for sale" or "exposed for sale" shall be construed to include the use of any advertising media or means.

"Person" includes corporation, companies, association, societies, firms, partnerships and joint stock companies as well as individuals.

"Superintendent" means the Superintendent of the Office of Weights and Measures.

"Vehicle" means any motor vehicle or motor-drawn vehicle under the control of a dealer in or upon which the products involved are loaded.

"Weights and measures officials" means a State or local weights and measures official.

2. Section 3 of P.L.1968, c.222 (C.51:4-25) is amended to read as follows:

C.51:4-25 License.

3. It shall be unlawful for any dealer to engage in the business of selling or selling and delivering building materials, to a consumer for use in this State unless he shall have obtained from the Office of Weights and Measures a license to engage in said business.

3. Section 4 of P.L.1968, c.222 (C.51:4-26) is amended to read as follows:

C.51:4-26 License; application, fee, expiration.

4. Applications for a license shall be made upon forms prescribed and furnished by the superintendent and shall list the places of business of the dealer. The fee for a dealer's license shall be \$100. Such license shall expire one year after date of issuance. Renewal notices shall be issued to licensees at least 30 days prior to the expiration of the license.

4. Section 6 of P.L.1968, c.222 (C.51:4-28) is amended to read as follows:

C.51:4-28 Delivery ticket, form and content; filing of voided tickets.

6. No dealer shall deliver or cause to be delivered by vehicles under his own control or the control of any contractor or other carrier any building materials without each delivery being accompanied by a delivery ticket. Each delivery ticket shall be serially numbered and used only in consecutive order or uniquely identified. On such tickets there shall be distinctly and indelibly expressed in ink or otherwise, the quantity, species, quality, or grade, name and type of each such building materials, trademark, name and address of the seller, the name and address of the purchaser and the date of delivery. One ticket shall be retained at the point of sale or place from which delivery commences; and the duplicate shall be delivered to the person receiving such building materials or his representative.

All voided delivery tickets, issued under the provisions of this act shall be kept on file at the place of business of the seller where the sale originated for a period of 2 years from date of issuance and shall be subject to inspection by any weights and measures official.

Any person issuing or directing the issuance of, or possessing a delivery ticket showing a different species, quantity, quality, or grade, name or type other than the species, quantity, quality or grade, name or type of building material being delivered or persons appearing at the place of delivery each with a delivery ticket for the same delivery, which tickets have different species, quantity, quality or grade, name or type appearing thereon, shall be deemed guilty of a violation of this act.

5. Section 10 of P.L.1968, c.222 (C.51:4-32) is amended to read as follows:

C.51:4-32 Administration and enforcement by superintendent; power and authority of weights and measures officials.

10. The superintendent shall have general supervision of the administration and enforcement of this act. All weights and measures officials shall have full power and authority to:

(a) Inspect and measure any building materials while in transit from the dealer to the consumer in vehicles owned, leased or rented by the dealer, after the same have been delivered to the consumer or after they have been incorporated in the building or structure in which they have become a part. They shall also have full power and authority to inspect the delivery tickets issued with any shipment and all records of the person, firm or corporation selling or selling and delivering such building materials in connection with the building materials so delivered.

(b) Issue stop-use, stop-removal, removal, condemnation, confiscation orders with reference to building materials, which he finds being used, sold, offered, exposed for sale, kept or in the process of delivery by a dealer in vehicles owned, leased or rented by him in violation of any of the provisions of this act or any rule, regulation, or order promulgated by the superintendent. Any such order shall be supported by legal processes, as provided in section 15 of P.L.1968, c.222 (C.51:4-37), by the superintendent within 30 days.

(c) Seize for use as evidence, any building materials, which he finds used, kept, sold, offered for sale or exposed for sale or in the process of delivery by a dealer in vehicles owned, leased or rented by him in violation of any of the provisions of this act or any rule, regulation, or order promulgated by the superintendent. No person shall use, remove from the premises specified, or fail to remove from the premises specified any building materials contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

6. Section 11 of P.L.1968, c.222 (C.51:4-33) is amended to read as follows:

C.51:4-33 Stop-use, stop-removal, removal, condemnation, or confiscating orders; liability of consumers.

11. In the event that the superintendent or any of his agents or employees or any weights and measures officials issue any stop-use, stop-removal, removal, condemnation, or confiscating orders with reference to building materials found being used, sold, offered, exposed for sale, kept or in the process of delivery by a dealer in vehicles owned or leased or rented by him in violation of any of the provisions of this act or any rule, regulation, or order promulgated by the superintendent then in that event the dealer shall be responsible as

provided for in section 15 of P.L.1968, c.222 (C.51:4-37). The consumer shall not be primarily liable for any violation of any of the provisions of this act committed by the dealer nor shall the consumer be liable as a guarantor or surety for any violation of any provisions committed by the dealer nor shall the consumer be deemed to warrant any action or actions exercised by the dealer which actions are in violation of any of the provisions of this act.

7. Section 16 of P.L.1968, c.222 (C.51:4-38) is amended to read as follows:

C.51:4-38 Violations; penalties; collection and enforcement; process.

16. Any person who knowingly violates any of the provisions of this act for which specific penalty or punishment is not otherwise provided, shall pay a penalty of not less than \$50.00 nor more than \$100.00 for the first offense, not less than \$100.00 nor more than \$250.00 for the second offense, and not less than \$250.00 nor more than \$500.00 for each subsequent offense.

The Superior Court and municipal court shall have jurisdiction of proceedings for the collection and enforcement of a penalty imposed because of the violation, within the territorial jurisdiction of the court, of any provision of this act. The penalty shall be collected and enforced in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the superintendent or any other weights and measures official.

8. This act shall take effect on the 180th day following enactment.

Approved January 17, 2014.