

February 18, 1969

LEGISLATIVE HISTORY OF R.S. 51:4-23 et seq.
(Building materials dealers)

Previous bills were:

1965 - A582

March 15 - Introduced by McDonough & 4 others.
 March 15 - Business Affairs Committee.
 April 26 - Reported with committee amendment.
 April 26 - 2d reading.
 May 24 - Recommitted.
 Statement: copy enclosed.
 Amendment: copy enclosed.

1966 - S328

April 4 - Introduced by Keegan.
 April 4 - Business Affairs Committee.
 June 3 - Public hearing held.
 No statement.
 No amendment.

1967 - S24

Jan. 10 - Introduced by Keegan.
 Jan. 10 - Business Affairs Committee.
 Died in committee.
 No statement.
 No amendment.

1967 - S328

Feb. 14 - Introduced by Bigley.
 Feb. 14 - State, Co. & Munic. Govt. Committee.
 Died in committee.
 No statement.
 No amendment.

The bill which became law was:

L. 1968, chapter 222 - A6 - 2d OCR

Jan. 9 - Introduced by McDonough & Kaltenbacher.
 Feb. 8 - Passed in Assembly, amended.
 May 20 - Passed in Senate, amended.
 May 27 - Senate amendment passed in Assembly.
 July 30 - Approved, Chapter 222.
 No statement.
 Amendment: copy of original bill and both amendments attached.

Fiscal Note - Yes.

*COPY NO. 1
for material
see copy 2 & 3*

Hearings and reports.

974.90 N.J. Legislature. Senate. Business
W419 Affairs Committee.
1966 Public hearing on Senate bills Nos.
274, 327 and 328. [Weights and measures].
Held June 3, 1966.

Other places to check: N.J. Periodicals

N.J. Builder
N.J. Home Builders and Contractors.

JH/PC

ASSEMBLY, No. 6

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1968 SESSION

By Assemblyman McDONOUGH

AN ACT concerning building materials, supplementing Title 51 of the Revised Statutes and repealing sections 51:4-17 to 51:4-22 inclusive of the Revised Statutes.

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

3 1. As used in this act:

4 "Building materials" mean materials used in connection with
5 construction, fabrication and erection of residential, utility or
6 business premises including but not limited to steel lath; wall
7 boards; lumber; wood products; metal and composition sheathing
8 and siding; ceramic floor, roof and wall tiles; and plastic building
9 products.

10 "Consumer" means any person who purchases building
11 materials for incorporation into any type of structure or for the
12 purpose of manufacturing structural components.

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

14 "Deputy superintendent" means the deputy superintendent of
15 the Division of Weights and Measures.

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

19 "Division" means the State Division of Weights and Measures.

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

22 "Equipped dealer" means any person who is regularly engaged
23 in the business of selling or selling and delivering building mate-
24 rials in this State and who maintains unloading or loading, storage,
25 transportation, communication, sales, services or other facilities
26 therefor, with an office accessible to the public with a competent
27 person on duty, commensurate with the nature and other require-
28 ments of the business and an "unequipped dealer" means any

1 person who is regularly engaged in the business of selling building
2 materials in this State who does not maintain loading, unloading
3 or storage facilities.

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

7 "Lumber" means the wood obtained from the felling, trimming
8 and working up of all kinds and types of trees for use as a struc-
9 tural material.

10 "Wood products" mean any product derived from trees as a
11 result of any work or manufacturing process upon the same.

12 "Misabeled" or "misbranded" shall be deemed to mean the
13 labeling is misleading, deceiving, or tends to be misleading or
14 deceiving in any particular, and there shall also be taken into
15 account, among other things, not only the representations made or
16 suggested by any statement, word, design, or any combination
17 thereof, but also the extent to which such labeling fails to reveal
18 facts material in the light of such representations or material with
19 respect to consequences which may result from the use of such
20 building materials, to which such labeling relates under the con-
21 ditions of use prescribed in the labeling thereof or under such con-
22 ditions of use as are customary or usual.

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

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

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

30 "Superintendent" means the Superintendent of the Division of
31 Weights and Measures.

32 "Vehicle" means any motor vehicle or motor-drawn vehicle in
33 or upon which the products involved are loaded.

34 "Weights and measures officials" mean any State or local
35 weights and measures official.

36 2. It shall be unlawful for any person to sell, sell and deliver,
37 offer or advertise for sale by the use of any media, building mate-
38 rials, in this State except in accordance with the provisions of this
39 act.

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

1 4. Applications for a license shall be made upon forms prescribed
2 and furnished by the superintendent and shall list the places of
3 business of the dealer. The fee for a dealer's license shall be \$50.00.
4 Such license shall expire one year after date of issuance.

5 5. All lumber, wood products and building materials shall be
6 graded, measured and labeled in accordance with the applicable
7 commercial standards of the United States Department of Com-
8 merce, the grading rules of approved grade rules writing agencies,
9 or other industry standards as are accepted by the superintendent.
10 The superintendent may not change, amend, modify or refuse to
11 accept such standards without justifiable reason and where such
12 standards or rules do not exist and where necessary to implement
13 the provisions of this act, the superintendent shall establish the
14 grade, measure and trade name only after consultation with the
15 manufacturers and dealers involved.

16 6. No dealer shall deliver or cause to be delivered by vehicles
17 under his own control or the control of any contractor or other
18 carrier any building materials without each delivery being accom-
19 panied by a delivery ticket and duplicate thereof. Each such
20 delivery ticket shall be serially numbered and used only in con-
21 secutive order. On such tickets there shall be distinctly and in-
22 delibly expressed in ink or otherwise, the quantity, species, quality,
23 or grade, name and type of each such building materials, trademark,
24 name and address of the seller, the name and address of the
25 purchaser and the date of delivery. One ticket shall be retained at
26 the point of sale or place from which delivery commences; and the
27 second ticket shall be delivered to the person receiving such building
28 materials or his representative.

29 All voided delivery tickets in duplicate, issued under the pro-
30 visions of this act shall be kept on file at the place of business of
31 the seller where the sale originated for a period of 2 years from
32 date of issuance and shall be subject to inspection by any weights
33 and measures officer.

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

42 7. Any person who misrepresents, mislabels or misbrands any
43 lumber, wood product or building material or who causes a

1 deviation from the applicable standards, rules or regulations, where
2 such deviation misrepresents any lumber, wood product or building
3 material so as to mislead or deceive a purchaser of the same shall
4 be guilty of a misdemeanor.

5 8. No person shall sell, expose for sale, offer for sale in this
6 State, buy for the purpose of resale or manufacture for the purpose
7 of resale in this State any lumber, wood product or building mate-
8 rials which deviate from the applicable standards, rules or regula-
9 tions promulgated by the superintendent.

10 9. The superintendent is authorized to establish and promulgate
11 such rules, regulations or orders as he may deem necessary to
12 implement the enforcement or administration of this act.

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

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

25 (b) Issue stop-use, stop-removal, removal, condemnation, con-
26 fiscation orders with reference to building materials, which he finds
27 being used, sold, offered, exposed for sale, kept or in the process
28 of delivery by a dealer in vehicles owned, leased or rented by him in
29 violation of any of the provisions of this act or any rule, regulation,
30 or order promulgated by the superintendent. Any such order must
31 be supported by legal processes, as provided in section 14, by the
32 superintendent within 30 days.

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

42 11. The superintendent may, after proper notice and hearing,
43 revoke, suspend, restrict or otherwise limit, or refuse to issue or

1-7 renew any license issued or granted pursuant to the provisions of
8 this act for any of the following reasons :

9 (a) fraud or misrepresentation in the application for or in the
10 procuring of a license ;

11 (b) the violation of any rule, regulation or order promulgated
12 by the superintendent ;

13 (c) any dishonest, deceptive, or any fraudulent practice, conduct
14 or transaction ; and

15 (d) the loaning or the giving of any license.

16 Any licensee or applicant for license, may request, and shall be
17 granted a hearing before the Attorney General or his designee upon
18 any order, revocation or allegation of any weights and measures
19 official.

20 12. The superintendent may from time to time employ on a
21 temporary basis such specialists and experts as he may deem
22 necessary in carrying out the purposes of this act. Such employ-
23 ment shall not be subject to the provisions of Title 11 of the Revised
24 Statutes.

25 13. The superintendent is empowered to institute, or cause to be
26 instituted such legal proceedings or processes as may be necessary
27 to enforce and give effect to any of his powers and duties as pre-
28 scribed in this act.

29 14. The superintendent shall have the power to issue subpoenas
30 to compel production of any pertinent records, books or documents
31 or the attendance of witnesses in any matter pertaining to his duties
32 and shall have the power to administer oaths in taking testimony.
33 Subpoenas shall be issued under the seal of the superintendent and
34 shall be served in the same manner as subpoenas issued out of a
35 County Court of this State.

36 Upon the failure of any person to obey a subpoena as aforesaid,
37 the superintendent may apply to the Superior Court for appro-
38 priate relief.

39 15. Any person who knowingly violates any of the provisions of
40 this act for which specific penalty or punishment is not otherwise
41 provided, shall pay a penalty of not less than \$50.00 nor more than
42 \$100.00 for the first offense, not less than \$100.00 nor more than
43 \$250.00 for the second offense, and not less than \$250.00 nor more
44 than \$500.00 for each subsequent offense.

45 Every county district court and municipal court shall have juris-
46 diction of proceedings for the collection and enforcement of a
47 penalty imposed because of the violation, within the territorial

1-4 jurisdiction of the court, of any provision of this act. The penalty
5 shall be collected and enforced in a summary proceeding pursuant
6 to the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.). Process
7 shall be either in the nature of a summons or warrant and shall
8 issue in the name of the State, upon the complaint of the super-
9 intendent or any other weights and measures official.

10 16. Sections 51:4-17 to 51:4-22 inclusive of the Revised Statutes
11 are repealed.

12 17. This act shall take effect 90 days after enactment.

ASSEMBLY COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 6

STATE OF NEW JERSEY

ADOPTED FEBRUARY 5, 1968

Amend page 2, section 1, line 11, after "same" insert "primarily intended for use as a building material".

SENATE AMENDMENTS TO
ASSEMBLY, No. 6

STATE OF NEW JERSEY

ADOPTED MAY 13, 1968

Amend page 1, section 1, lines 4 through 9, delete in their entirety, insert “ ‘Building materials’ means lumber, wood and wood product materials used in connection with the construction, fabrication and erection of residential, utility or business premises.”.

Amend page 1, section 1, lines 11, 13, omit “or for the purpose of manufacturing structural components”.

Amend page 1, section 1, line 16, after “ ‘Delivery,’ ”, insert “ ‘deliver’ or ‘delivered,’ ”.

Amend page 1, section 1, line 18, after “State”, insert “to a consumer”.

Amend page 1, section 1, line 24, after “rials”, insert “to consumers”.

Amend page 2, section 1, line 2, after “materials”, insert “at retail”; after “State”, insert “to consumers in this State”.

Amend page 2, section 1, line 32, before “in”, insert “under the control of a dealer”.

Amend page 2, section 2, line 36, omit “person”, insert “dealer”.

Amend page 2, section 2, line 37, after “sale”, insert “to consumers”.

Amend page 2, section 3, line 40, omit “person”, insert “dealer”.

Amend page 4, section 10, line 31, omit “14”, insert “15”.

Amend page 4, section 10, after line 41, insert a new section 11. as follows:

“11. In the event that the superintendent or any of his agents, servants 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 paragraph 15 of the act. 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.”.

Amend pages 4, 5, 6, renumber sections “11” through “17” as “12” through “18”.

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11 materials for incorporation into any type of structure or for the
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14 "Deputy superintendent" means the deputy superintendent of
15 the Division of Weights and Measures.

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21 business" shall include any single transaction, act or sale.

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23 in the business of selling or selling and delivering building mate-
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25 transportation, communication, sales, services or other facilities
26 therefor, with an office accessible to the public with a competent
27 person on duty, commensurate with the nature and other require-
28 ments of the business and an "unequipped dealer" means any

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2 materials in this State who does not maintain loading, unloading
3 or storage facilities.

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5 or graphic matter upon any building materials or accompanying
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15 account, among other things, not only the representations made or
16 suggested by any statement, word, design, or any combination
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18 facts material in the light of such representations or material with
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31 Weights and Measures.

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33 or upon which the products involved are loaded.

34 "Weights and measures officials" mean any State or local
35 weights and measures official.

36 2. It shall be unlawful for any person to sell, sell and deliver,
37 offer or advertise for sale by the use of any media, building mate-
38 rials, in this State except in accordance with the provisions of this
39 act.

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

1 4. Applications for a license shall be made upon forms prescribed
2 and furnished by the superintendent and shall list the places of
3 business of the dealer. The fee for a dealer's license shall be \$50.00.
4 Such license shall expire one year after date of issuance.

5 5. All lumber, wood products and building materials shall be
6 graded, measured and labeled in accordance with the applicable
7 commercial standards of the United States Department of Com-
8 merce, the grading rules of approved grade rules writing agencies,
9 or other industry standards as are accepted by the superintendent.
10 The superintendent may not change, amend, modify or refuse to
11 accept such standards without justifiable reason and where such
12 standards or rules do not exist and where necessary to implement
13 the provisions of this act, the superintendent shall establish the
14 grade, measure and trade name only after consultation with the
15 manufacturers and dealers involved.

16 6. No dealer shall deliver or cause to be delivered by vehicles
17 under his own control or the control of any contractor or other
18 carrier any building materials without each delivery being accom-
19 panied by a delivery ticket and duplicate thereof. Each such
20 delivery ticket shall be serially numbered and used only in con-
21 secutive order. On such tickets there shall be distinctly and in-
22 delibly expressed in ink or otherwise, the quantity, species, quality,
23 or grade, name and type of each such building materials, trademark,
24 name and address of the seller, the name and address of the
25 purchaser and the date of delivery. One ticket shall be retained at
26 the point of sale or place from which delivery commences; and the
27 second ticket shall be delivered to the person receiving such building
28 materials or his representative.

29 All voided delivery tickets in duplicate, issued under the pro-
30 visions of this act shall be kept on file at the place of business of
31 the seller where the sale originated for a period of 2 years from
32 date of issuance and shall be subject to inspection by any weights
33 and measures officer.

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

42 7. Any person who misrepresents, mislabels or misbrands any
43 lumber, wood product or building material or who causes a

1 deviation from the applicable standards, rules or regulations, where
2 such deviation misrepresents any lumber, wood product or building
3 material so as to mislead or deceive a purchaser of the same shall
4 be guilty of a misdemeanor.

5 8. No person shall sell, expose for sale, offer for sale in this
6 State, buy for the purpose of resale or manufacture for the purpose
7 of resale in this State any lumber, wood product or building mate-
8 rials which deviate from the applicable standards, rules or regula-
9 tions promulgated by the superintendent.

10 9. The superintendent is authorized to establish and promulgate
11 such rules, regulations or orders as he may deem necessary to
12 implement the enforcement or administration of this act.

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

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

25 (b) Issue stop-use, stop-removal, removal, condemnation, con-
26 fiscation orders with reference to building materials, which he finds
27 being used, sold, offered, exposed for sale, kept or in the process
28 of delivery by a dealer in vehicles owned, leased or rented by him in
29 violation of any of the provisions of this act or any rule, regulation,
30 or order promulgated by the superintendent. Any such order must
31 be supported by legal processes, as provided in section 14, by the
32 superintendent within 30 days.

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

42 11. The superintendent may, after proper notice and hearing,
43 revoke, suspend, restrict or otherwise limit, or refuse to issue or

1-7 renew any license issued or granted pursuant to the provisions of
8 this act for any of the following reasons :

9 (a) fraud or misrepresentation in the application for or in the
10 procuring of a license ;

11 (b) the violation of any rule, regulation or order promulgated
12 by the superintendent ;

13 (c) any dishonest, deceptive, or any fraudulent practice, conduct
14 or transaction ; and

15 (d) the loaning or the giving of any license.

16 Any licensee or applicant for license, may request, and shall be
17 granted a hearing before the Attorney General or his designee upon
18 any order, revocation or allegation of any weights and measures
19 official.

20 12. The superintendent may from time to time employ on a
21 temporary basis such specialists and experts as he may deem
22 necessary in carrying out the purposes of this act. Such employ-
23 ment shall not be subject to the provisions of Title 11 of the Revised
24 Statutes.

25 13. The superintendent is empowered to institute, or cause to be
26 instituted such legal proceedings or processes as may be necessary
27 to enforce and give effect to any of his powers and duties as pre-
28 scribed in this act.

29 14. The superintendent shall have the power to issue subpoenas
30 to compel production of any pertinent records, books or documents
31 or the attendance of witnesses in any matter pertaining to his duties
32 and shall have the power to administer oaths in taking testimony.
33 Subpoenas shall be issued under the seal of the superintendent and
34 shall be served in the same manner as subpoenas issued out of a
35 County Court of this State.

36 Upon the failure of any person to obey a subpoena as aforesaid,
37 the superintendent may apply to the Superior Court for appro-
38 priate relief.

39 15. Any person who knowingly violates any of the provisions of
40 this act for which specific penalty or punishment is not otherwise
41 provided, shall pay a penalty of not less than \$50.00 nor more than
42 \$100.00 for the first offense, not less than \$100.00 nor more than
43 \$250.00 for the second offense, and not less than \$250.00 nor more
44 than \$500.00 for each subsequent offense.

45 Every county district court and municipal court shall have juris-
46 diction of proceedings for the collection and enforcement of a
47 penalty imposed because of the violation, within the territorial

- 1-4 jurisdiction of the court, of any provision of this act. The penalty
5 shall be collected and enforced in a summary proceeding pursuant
6 to the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.). Process
7 shall be either in the nature of a summons or warrant and shall
8 issue in the name of the State, upon the complaint of the super-
9 intendent or any other weights and measures official.
- 10 16. Sections 51:4-17 to 51:4-22 inclusive of the Revised Statutes
11 are repealed.
- 12 17. This act shall take effect 90 days after enactment.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 6

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MARCH 25, 1968

Amend page 1, section 1, line 8, before "plastic", omit "and".

Amend page 1, section 1, line 9, after "products", insert "; and structural components manufactured from any of the foregoing materials; but not including mineral aggregates or any products produced directly therefrom".

Amend page 1, section 1, lines 11, 13, omit "or for the purpose of manufacturing structural components".

Amend page 1, section 1, line 16, after "'Delivery,'" insert "'deliver' or 'delivered,'".

Amend page 1, section 1, line 18, after "State", insert "to a consumer".

Amend page 1, section 1, line 23, after "business of selling", insert "at retail"; after "delivering", insert "at retail".

Amend page 1, section 1, line 24, after "rials", insert "to consumers".

Amend page 2, section 1, line 2, after "materials", insert "at retail"; after "State", insert "to consumers in this State".

Amend page 2, section 1, line 32, before "in", insert "under the control of a dealer".

Amend page 2, section 2, line 36, omit "person", insert "dealer".

Amend page 2, section 2, line 37, after "sale", insert "to consumers".

Amend page 2, section 3, line 40, omit "person", insert "dealer".

Amend page 3, section 6, line 19, after "thereof", insert "or a bill of lading".

Amend page 3, section 7, line 42, after "who", insert "knowingly".

Amend page 4, section 7, line 3, before "mislead", insert "willfully".

Amend page 4, section 10, line 31, omit "14", insert "15".

Amend page 4, section 10, after line 41, insert a new section 11. as follows:

"11. In the event that the superintendent or any of his agents, servants 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 paragraph 15 of the act. 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.”.

Amend pages 4, 5, 6, renumber sections “11” through “17” as “12” through “18”.

ASSEMBLY, No. 6

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1968 SESSION

By Assemblyman McDONOUGH

AN ACT concerning building materials, supplementing Title 51 of the Revised Statutes and repealing sections 51:4-17 to 51:4-22 inclusive of the Revised Statutes.

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

1 1. As used in this act:

2 ******["Building materials" mean materials used in connection with
3 construction, fabrication and erection of residential, utility or
4 business premises including but not limited to steel lath; wall
5 boards; lumber; wood products; metal and composition sheathing
6 and siding; ceramic floor, roof and wall tiles; and plastic building
7 products.]** *******"Building materials" means lumber, wood and
8 wood product materials used in connection with the construction,
9 fabrication and erection of residential, utility or business
10 premises.**

11 "Consumer" means any person who purchases building ma-
12 terials for incorporation into any type of structure ******[or for the
13 purpose of manufacturing structural components]**.

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

15 "Deputy superintendent" means the deputy superintendent of
16 the Division of Weights and Measures.

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

21 "Division" means the State Division of Weights and Measures.

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

24 "Equipped dealer" means any person who is regularly engaged
25 in the business of selling or selling and delivering building mate-
26 rials ****to consumers**** in this State and who maintains unloading

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

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

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

38 "Lumber" means the wood obtained from the felling, trimming
39 and working up of all kinds and types of trees for use as a struc-
40 tural material.

41 "Wood products" mean any product derived from trees as a
42 result of any work or manufacturing process upon the same **pri-*
43 *marily intended for use as a building material**.

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

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

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

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

62 "Superintendent" means the Superintendent of the Division of
63 Weights and Measures.

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

67 "Weights and measures officials" mean an State or local weights
68 and measures official.

1 2. It shall be unlawful for any **[person]** *dealer* to sell,
2 sell and deliver, offer or advertise for sale *to consumers* by
3 the use of any media, building materials, in this State except in
4 accordance with the provisions of this act.

1 3. It shall be unlawful for any **[person]** *dealer* to engage
2 in the business of selling or selling and delivering building mate-
3 rials, to a consumer for use in this State unless he shall have
4 obtained from the Division of Weights and Measures a license to
5 engage in said business.

1 4. Applications for a license shall be made upon forms prescribed
2 and furnished by the superintendent and shall list the places of
3 business of the dealer. The fee for a dealer's license shall be \$50.00.
4 Such license shall expire one year after date of issuance.

1 5. All lumber, wood products and building materials shall be
2 graded, measured and labeled in accordance with the applicable
3 commercial standards of the United States Department of Com-
4 merce, the grading rules of approved grade rules writing agencies,
5 or other industry standards as are accepted by the superintendent.
6 The superintendent may not change, amend, modify or refuse to
7 accept such standards without justifiable reason and where such
8 standards or rules do not exist and where necessary to implement
9 the provisions of this act, the superintendent shall establish the
10 grade, measure and trade name only after consultation with the
11 manufacturers and dealers involved.

1 6. No dealer shall deliver or cause to be delivered by vehicles
2 under his own control or the control of any contractor or other
3 carrier any building materials without each delivery being accom-
4 panied by a delivery ticket and duplicate thereof. Each such
5 delivery ticket shall be serially numbered and used only in con-
6 secutive order. On such tickets there shall be distinctly and in-
7 delibly expressed in ink or otherwise, the quantity, species, quality,
8 or grade, name and type of each such building materials, trademark,
9 name and address of the seller, the name and address of the
10 purchaser and the date of delivery. One ticket shall be retained at
11 the point of sale or place from which delivery commences; and the
12 second ticket shall be delivered to the person receiving such building
13 materials or his representative.

14 All voided delivery tickets in duplicate, issued under the pro-
15 visions of this act shall be kept on file at the place of business of
16 the seller where the sale originated for a period of 2 years from
17 date of issuance and shall be subject to inspection by any weights
18 and measures officer.

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

1 7. Any person who misrepresents, mislabels or misbrands any
2 lumber, wood product or building material or who causes a
3 deviation from the applicable standards, rules or regulations, where
4 such deviation misrepresents any lumber, wood product or building
5 material so as to mislead or deceive a purchaser of the same shall
6 be guilty of a misdemeanor.

1 8. No person shall sell, expose for sale, offer for sale in this
2 State, buy for the purpose of resale or manufacture for the purpose
3 of resale in this State any lumber, wood product or building mate-
4 rials which deviate from the applicable standards, rules or regula-
5 tions promulgated by the superintendent.

1 9. The superintendent is authorized to establish and promulgate
2 such rules, regulations or orders as he may deem necessary to
3 implement the enforcement or administration of this act.

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

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

13 (b) Issue stop-use, stop-removal, removal, condemnation, con-
14 fiscation orders with reference to building materials, which he finds
15 being used, sold, offered, exposed for sale, kept or in the process
16 of delivery by a dealer in vehicles owned, leased or rented by him in
17 violation of any of the provisions of this act or any rule, regulation,
18 or order promulgated by the superintendent. Any such order must
19 be supported by legal processes, as provided in section ****[14]****
20 ****15,**** by the superintendent within 30 days.

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

1 ***11. In the event that the superintendent or any of his agents,
 2 servants or employees or any weights and measures officials issue
 3 any stop-use, stop-removal, removal, condemnation, or confiscating
 4 orders with reference to building materials found being used, sold,
 5 offered, exposed for sale, kept or in the process of delivery by a
 6 dealer in vehicles owner or leased or rented by him in violation of
 7 any of the provisions of this act or any rule, regulation, or order
 8 promulgated by the superintendent then in that event the dealer
 9 shall be responsible as provided for in paragraph 15 of the act. The
 10 consumer shall not be primarily liable for any violation of any of
 11 the provisions of this act committed by the dealer nor shall the
 12 consumer be liable as a guarantor or surety for any violation of any
 13 provisions committed by the dealer nor shall the consumer be
 14 deemed to warrant any action or actions exercised by the dealer
 15 which actions are in violation of any of the provisions of this act.***

1 ***[11.]** **12.*** The superintendent may, after proper notice
 2 and hearing, revoke, suspend, restrict or otherwise limit, or refuse
 3 to issue or renew any license issued or granted pursuant to the
 4 provisions of this act for any of the following reasons:

- 5 (a) fraud or misrepresentation in the application for or in the
 6 procuring of a license;
- 7 (b) the violation of any rule, regulation or order promulgated
 8 by the superintendent;
- 9 (c) any dishonest, deceptive, or any fraudulent practice, conduct
 10 or transaction; and
- 11 (d) the loaning or the giving of any license.

12 Any licensee or applicant for license, may request, and shall be
 13 granted a hearing before the Attorney General or his designee upon
 14 any order, revocation or allegation of any weights and measures
 15 official.

1 ***[12.]** **13.*** The superintendent may from time to time em-
 2 ploy on a temporary basis such specialists and experts as he may
 3 deem necessary in carrying out the purposes of this act. Such

4 employment shall not be subject to the provisions of Title 11 of the
5 Revised Statutes.

1 ****[13.]**** ****14.**** The superintendent is empowered to institute,
2 or cause to be instituted such legal proceedings or processes as may
3 be necessary to enforce and give effect to any of his powers and
4 duties as prescribed in this act.

1 ****[14.]**** ****15.**** The superintendent shall have the power to
2 issue subpoenas to compel production of any pertinent records,
3 books or documents or the attendance of witnesses in any matter
4 pertaining to his duties and shall have the power to administer
5 oaths in taking testimony. Subpoenas shall be issued under the seal
6 of the superintendent and shall be served in the same manner as
7 subpoenas issued out of a County Court of this State.

8 Upon the failure of any person to obey a subpoena as aforesaid,
9 the superintendent may apply to the Superior Court for appro-
10 priate relief.

1 ****[15.]**** ****16.**** Any person who knowingly violates any of the
2 provisions of this act for which specific penalty or punishment is
3 not otherwise provided, shall pay a penalty of not less than \$50.00
4 nor more than \$100.00 for the first offense, not less than \$100.00 nor
5 more than \$250.00 for the second offense, and not less than \$250.00
6 nor more than \$500.00 for each subsequent offense.

7 Every county district court and municipal court shall have juris-
8 diction of proceedings for the collection and enforcement of a
9 penalty imposed because of the violation, within the territorial
10 jurisdiction of the court, of any provision of this act. The penalty
11 shall be collected and enforced in a summary proceeding pursuant
12 to the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.). Process
13 shall be either in the nature of a summons or warrant and shall
14 issue in the name of the State, upon the complaint of the super-
15 intendent or any other weights and measures official.

1 ****[16.]**** ****17.**** Sections 51:4-17 to 51:4-22 inclusive of the
2 Revised Statutes are repealed.

1 ****[17.]**** ****18.**** This act shall take effect 90 days after
2 enactment.

FISCAL NOTE TO
ASSEMBLY, No. 6

STATE OF NEW JERSEY

DATED: JANUARY 29, 1968

Assembly Bill No. 6 provides for the regulating and licensing of the selling and delivering of building materials. It also provides penalties for violations.

Based on the assumption that 600 building material dealers would purchase licenses at \$50.00 each, enactment of this legislation would result in annual revenues of \$30,000.00. Salaries and other administrative expenses in the balance of the current fiscal year, including the cost of establishing an administrative procedure required to administer the act, would amount to \$10,500.00, leaving a net surplus of \$19,500.00. For the full year of 1969, salaries and administrative expenses would amount to \$19,450.00, leaving a net surplus of \$10,550.00.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.