

HOUSE BILL REPORT

HB 2949

*As Reported By House Committee on:
Housing*

Title: An act relating to consumer remedies for purchasers of manufactured homes.

Brief Description: Regulating the sale of manufactured homes.

Sponsor(s): Representative Cooper.

Brief History:

Reported by House Committee on:
Housing, February 7, 1992, DPS.

**HOUSE COMMITTEE ON
HOUSING**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 5 members: Representatives Nelson, Chair; Franklin, Vice Chair; Winsley, Assistant Ranking Minority Member; Leonard; and Ogden.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Mitchell, Ranking Minority Member and Ballard.

Staff: Bill Lynch (786-7092).

Background: Mobile home manufacturers and dealers are required to provide a manufacturer's written warranty with each new mobile home sold. The purchaser must also be provided with a dealer's written warranty for all installation services performed by the dealer. The warranties are valid for a minimum of one year from the date of sale, and remains valid even though the mobile home is sold to another purchaser. There is often a large gap in time between when a mobile home is sold and when it is delivered. The one-year warranty period may be substantially shorter by the time the purchaser moves into the mobile home. There are no statutory warranties to cover installations made by people other than the dealer.

The uniform commercial code provides that unless excluded or modified, each sale of goods is accompanied with an implied warranty of fitness for a particular purpose and an implied

warranty of merchantability. These implied warranties generally require that the goods must pass in the trade without objection, and the goods are fit for the ordinary purpose for which the goods are used. These warranties can be waived by the purchaser.

Before delivery of possession of the mobile home to the purchaser, an inspection of the mobile home must be conducted by the purchaser and the dealer. All systems of the mobile home must be tested in the course of this inspection. A mobile home manufacturer, dealer, or salesperson is required to place all "on deposit" funds from the purchaser into escrow until the purchaser has taken delivery of the mobile home. There is no clear definition of what constitutes "delivery". If delivery is considered to occur before the purchaser of a mobile home has taken the inspection of the mobile home, then there are no moneys left in the escrow account for the purchaser to withhold payment.

Manufactured home dealers and manufacturers are required to be bonded. It is possible for the amount of the bond to be exhausted by one consumer claim. Other states have created recovery funds to ensure that purchasers of mobile homes can recover on their claims for repairs.

Summary of Substitute Bill: The one-year warranty period that must be provided for all new mobile home sales begins to run when the mobile home is delivered instead of when it is sold. Any one who installs a mobile home warrants that it was installed in accordance with the state installation code.

Each sale of a new mobile home is made with an implied warranty that it conforms in all material aspects to applicable federal and state laws establishing standards of safety or quality. Each sale of a new mobile home is made with an implied warranty of fitness for a particular purpose and merchantability. These implied warranties cannot be waived.

A purchaser of a mobile home is deemed to take delivery when the home has been inspected and the test of all the systems in the home has been completed. Only those funds advanced to the seller as a requirement for the seller to order the mobile home are considered to be funds that the purchaser has placed "on deposit" for escrow purposes. Loan proceeds or payments made on an installment contract are expressly excluded from the requirement that they be kept in escrow until the mobile home has been delivered.

A manufactured housing transaction recovery fund is created. The fund is for the purpose of reimbursing purchasers of

mobile homes for claims that cannot be satisfied by the mobile home manufacturer or dealer. The Department of Community Development administers the fund.

The fund consists of proceeds derived from a one-time fee assessment against manufacturers of \$3000 for each manufacturing facility, dealers of \$500 for each retail location, and installers of \$500 for each business location; as well as a \$10 fee imposed on every transfer of title of a mobile home. Whenever the fund balance reaches \$250,000, the Department of Community Development can reduce or eliminate the \$10 fee. The department may reimpose the fee when the fund balance falls below \$250,000.

A purchaser of a mobile home who wishes to recover damages from the recovery fund must file an application with the Department of Community Development. The purchaser must meet the following conditions to recover from the fund: The purchaser must have obtained a final court judgment; the judgment must be on the grounds of failure to honor a warranty, or for fraud, conversion, or willful misrepresentation; the judgment debtor must be without sufficient assets to meet the claims; the claim is filed within one year of the date of judgment; the buyer has agreed to subrogate all rights against the judgment debtor to the department; and there must be sufficient funds within the recovery fund.

Damages from the recovery fund is limited to the actual cost of repairs to the mobile home. No punitive damages, court costs, or attorney's fees may be awarded from the fund.

A manufacturer, dealer, or installer is liable for repaying in full all claims paid from the fund, plus interest, which arose against them. The debt against the fund is not discharged in bankruptcy.

If a manufacturer, dealer, or installer fails to pay the assessment, or if a claim is paid from the fund, the agency that certifies or licenses the manufacturer, dealer, or installer must suspend or deny their license, certification, or registration until the fund has been repaid in full. The departments of Licensing, Labor and Industries and Community Development must consult with each other before adopting rules.

The amount of bond required before being issued a license is reduced from \$30,000 to \$10,000 for a mobile home dealer, and from \$40,000 to \$20,000 for a mobile home manufacturer.

Substitute Bill Compared to Original Bill: The provisions that limited the maximum amount of recovery from the fund

are deleted. Out-of-state manufacturers who sell manufactured homes in the state are assessed the fee for deposit in the recovery fund. Language is added to clarify that a manufacturer or dealer that also acts as an installer only has to pay one fee. A consumer who installs his or her own mobile home does not create any implied warranty regarding the installation of the home. The \$10 fee imposed on the transfer of mobile home titles for deposit in the recovery fund is removed. Language is added to require the manufacturer, dealer, or installer to suspend or deny the license, certification, or registration if the assessment is not paid. The amount of bond required before being issued a license is reduced for mobile home dealers and manufacturers. Other technical amendments are made.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This will help consumers. Recovery funds for mobile home purchasers work well in other states.

Testimony Against: The government should not be in the recovery fund business because it competes with the private sector. Surety bonds may be purchased.

Witnesses: Representative David Cooper; Ron Clarke, Washington Manufactured Housing Association (supports); Heather Hamilton, Department of Licensing (supports); Stephen Gaines, Contractors Bonding and Surety Bonds (opposes); Arnold Livingston, Mobile Home Owners of America (supports); and Bob Jacobsen, Senior Lobby (supports).