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SENATE BILL NO. 1459

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 28, 2009)

(Patron Prior to Substitute—Senator Puckett)

A BILL to amend and reenact §§ 36-85.28, 36-85.31, and 36-85.32 of the Code of Virginia, relating to the Manufactured Housing Licensing and Transaction Recovery Fund Law.

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-85.28, 36-85.31, and 36-85.32 of the Code of Virginia are amended and reenacted as follows:

§ 36-85.28. Limitation on damages; disclosure to buyer.

A. If a buyer fails to accept delivery of a manufactured home, the manufactured home dealer may retain actual damages according to the following terms:

1. If the manufactured home is a single section unit in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be ~~\$500~~ \$1,000.

2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be ~~\$1,000~~ \$2,000.

3. *If the manufactured home is larger than a single section unit in the dealer's stock and not specially ordered for the buyer, the maximum retention shall be \$4,000.*

4. If the manufactured home is larger than a single section unit and is ~~special~~ specially ordered for the buyer from the manufacturer, the maximum retention shall be ~~\$5,000~~ \$7,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer, as listed in subsection A, for failure to take delivery of the manufactured home as purchased.

§ 36-85.31. Recovery fund to be established.

A. Each manufactured home manufacturer, dealer, broker and salesperson operating in the Commonwealth of Virginia shall be required to pay an initial assessment fee as set forth in subsection B to the Virginia Manufactured Housing Transaction Recovery Fund. Thereafter, assessment fees shall be assessed as necessary to achieve and maintain a minimum fund balance of ~~\$250,000~~ \$300,000.

B. Each applicant approved by the Board for a license as a manufactured home manufacturer, dealer, broker, or salesperson in accordance with the provisions of Article 1 (§ 36-85.16 et seq.) of this chapter shall pay into the fund the following assessment fees:

1. For a manufacturer - \$4,000 for each separate manufacturing facility payable in one installment or \$4,400 payable at \$2,200 per year for two years.

2. For a dealer - \$500 per retail location.

3. For a broker - \$500 per sales office.

4. For a salesperson - \$50 per individual.

C. All assessment fees collected under this article shall be deposited in the state treasury and the State Treasurer shall credit the amount paid into a special revenue fund from which appropriations may be utilized by the Board in accordance with the express purposes set forth in this article. The assets of the fund shall be invested in accordance with the advice of the State Treasurer. Interest earned on deposits constituting this fund shall accrue to the fund or may be used for the purposes of providing educational programs to ~~the consumer about manufactured housing consumers, code officials, and industry members~~ and to pay department staff expenses for conducting investigations and preparing reports and findings for the Board. *The Board may authorize an amount not to exceed five percent of the fund balance in any fiscal year to be used both for educational purposes and to pay department staff expenses for conducting investigations and preparing reports for the Board.*

§ 36-85.32. Recovery from fund generally.

Any person who suffers any loss or damage by any act of a regulant that constitutes a violation of this chapter shall have the right to institute an action to recover from the recovery fund.

Upon a finding by the Board that a violation has occurred, the Board shall direct the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. If such amount is not paid within thirty days following receipt of the written decision of the Board and no appeal has been filed in court, the Board shall, upon request of the claimant, pay from the recovery fund the amount of the award to the claimant provided that:

1. The maximum claim of one claimant against the fund because of a single ~~violation~~ or multiple violations by one ~~regulant~~ or more regulants shall be limited to ~~\$20,000~~ \$40,000;

2. The fund balance is sufficient to pay the award;

3. The claimant has assigned the Board all rights and claims against the regulant; and

60 4. The claimant agrees to subrogate to the Board all rights of the claimant to the extent of payment.

61 The aggregate of claims against the fund for violations by any one regulant shall be limited by the
62 Board to \$75,000 per manufacturer, \$35,000 per dealer, \$35,000 per broker, and \$25,000 per salesperson
63 during any license period. If a claim has been made against the fund, and the Board has reason to
64 believe there may be additional claims against the fund from other transactions involving the same
65 regulant, the Board may withhold any payments from the fund involving such regulant for a period of
66 not more than one year from the date on which the claimant is approved by the Board for an award
67 from the fund. After this one-year period, if the aggregate of claims against the regulant exceeds the
68 above limitations, said amount shall be prorated by the Board among the claimants and paid from the
69 fund in proportion to the amounts of their awards remaining unpaid.

70 The amount of damages awarded by the Board shall be limited to actual, compensatory damages and
71 shall not include attorney's fees for representation before the Board.

72 **2. That the provisions of this act shall expire on July 1, 2011.**