

981521443

HOUSE BILL NO. 679

Offered January 22, 1998

A BILL to amend and reenact §§ 36-85.16 through 36-85.23 and 36-85.29, 36-85.31, and 36-85.32 of the Code of Virginia, relating to the Manufactured Housing Board; installation of manufactured housing.

Patrons—Scott, Abbitt, Almand, Barlow, Croshaw, Grayson, Ingram, Reid, Wardrup and Woodrum;
Senators: Hawkins, Lambert, Martin, Miller, Y.B., Reynolds, Stosch and Wampler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-85.16 through 36-85.23 and 36-85.29, 36-85.31, and 36-85.32 of the Code of Virginia are amended and reenacted as follows:

§ 36-85.16. Definitions.

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under this chapter.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Industrialized Building and Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is 8 feet or more in width and is 40 feet or more in length, or when erected on site, is 320 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.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange of, or leases or offers to lease, used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person, resident or nonresident, engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any twelve-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home installer" or "installer" means any person, resident or nonresident who for compensation or valuable consideration performs the manufactured home installation operations at the occupancy site of the manufactured home.

"Manufactured home installation" or "installation" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation; digging and pouring footings; constructing piers and foundations; positioning; blocking, leveling, supporting, anchoring, and constructing landings and steps at exits; installing skirting; connecting utility systems; making minor adjustments; and connecting or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

INTRODUCED

HB679

60 "Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident,
61 who manufacture or assemble manufactured homes for sale in Virginia.

62 "Manufactured home salesperson" or "salesperson" means any person who for compensation or
63 valuable consideration is employed either directly or indirectly by, or affiliated as an independent
64 contractor with, a manufactured home dealer, broker or manufacturer to sell or offer to sell, or to buy or
65 offer to buy, or to negotiate the purchase, sale or exchange of, or to lease or offer to lease, new or used
66 manufactured homes.

67 "New manufactured home" means any manufactured home which (i) has not been previously sold
68 except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of
69 habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and
70 (iv) has not been titled by the Virginia Department of Motor Vehicles.

71 "Person" means any individual, natural person, firm, partnership, association, corporation, legal
72 representative, or other recognized legal entity.

73 "Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other
74 legal entity required by this chapter to be licensed by the Board.

75 "Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

76 "Set-up" means the operations performed at the occupancy site which render a manufactured home fit
77 for habitation. Such operations include, but are not limited to, transportation, positioning, blocking,
78 leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling
79 multiple or expandable units. Such operations do not include lawful transportation services performed by
80 public utilities operating under certificates or permits issued by the State Corporation Commission.

81 "Supplier" means the original producer of completed components, including refrigerators, stoves,
82 water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and
83 materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to
84 a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

85 "Used manufactured home" means any manufactured home other than a new home as defined in this
86 section.

87 § 36-85.17. Manufactured Housing Board created; membership.

88 A. There is hereby created the Virginia Manufactured Housing Board within the Department of
89 Housing and Community Development. The Board shall be composed of ~~nine~~ *ten* members appointed by
90 the Governor subject to confirmation by the General Assembly. The members shall include two
91 manufactured home manufacturers, two manufactured home dealers, *one manufactured home installer*,
92 the Director, and four members representing the public who have knowledge of the industry.

93 B. The Board shall elect from its members a chairman and a vice-chairman for terms of two years.
94 The members of the Board shall ~~initially~~ be appointed for four-year terms. ~~Upon expiration of the initial~~
95 ~~terms, one manufacturer, one dealer and two members representing the public shall be appointed for~~
96 ~~two-year terms while one manufacturer, one dealer and two members representing the public shall be~~
97 ~~appointed for four-year terms. All appointments thereafter shall be for four-year terms.~~ In the event of
98 any vacancy, the Governor shall appoint a replacement to serve the unexpired term. Meetings shall be
99 held at the call of the chairman or whenever two members so request.

100 C. No member of the Board shall participate in any proceeding before the Board involving that
101 member's own business.

102 § 36-85.18. Powers and duties of Manufactured Housing Board.

103 The Virginia Manufactured Housing Board shall have the following powers and duties:

- 104 1. To *certify and* issue licenses to manufacturers, dealers, brokers, *installers*, and salespersons;
- 105 2. To require that an adequate recovery fund be established for all regulants;
- 106 3. To receive and resolve complaints from buyers of manufactured homes and from persons in the
107 manufactured housing industry;
- 108 4. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.)
109 as are necessary to carry out the provisions of this chapter;
- 110 5. To make case decisions in accordance with the Administrative Process Act as are necessary to
111 carry out the provisions of this chapter; and
- 112 6. To levy and collect fees that are sufficient to cover the expenses for the administration of this
113 chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold
114 basis, a percentage basis, an annual ~~per dealer~~ basis, or a combination thereof.

115 § 36-85.19. License required; penalty.

116 A. It shall be unlawful and constitute the commission of a Class 1 misdemeanor for any
117 manufactured home manufacturer, dealer, broker, *installer*, or salesperson to be engaged in business as
118 such in this Commonwealth without first obtaining a license from the Board, as provided in this chapter.

119 Application for such license shall be made to the Board at such time, in such form, and contain such
120 information as the Board shall require, and shall be accompanied by required fees established by the
121 Board by regulation in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The Board

shall levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual ~~per dealer~~ basis, or a combination thereof.

In such application, the Board shall require information relating to the matters set forth in § 36-85.20 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which the license is sought.

All licenses that are granted shall expire, unless revoked or suspended, on the annual anniversary of the date of issuance.

Every regulant under this chapter shall obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the license shall automatically expire. Such license may be renewed upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, broker, *installer* or salesperson after expiration of the license and is otherwise eligible for a license under the provisions of this chapter.

Special licenses, not to exceed ten days in duration, may be issued for each temporary place of business, operated or proposed by the regulant, that is not contiguous to other premises for which a license is issued. The fee for a special license shall be established by the Board, ~~provided that~~; however, no such license shall be required for a place of business operated by a regulant that is used exclusively for storage.

B. Notwithstanding any other provisions of this chapter, the Board may provide by regulation that a manufactured home salesperson ~~will~~ *shall* be allowed to engage in business during the time period after applying for a license but before such license is granted.

§ 36-85.20. Grounds for denying, suspending or revoking license.

A license may be denied, suspended, or revoked by the Board on any one or more of the following grounds:

1. Material misstatement in application for license;
2. Failure to pay required assessment to the Manufactured Housing Recovery Fund;
3. Engaging in the business of a manufactured home manufacturer, dealer, broker, *installer* or salesperson without first obtaining a license from the Board;
4. Failure to comply with the warranty service obligations and claims procedure established by this chapter;
5. Failure to comply with the set-up and tie-down requirements of the Code;
6. Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into the regulant's possession arising from the sale of manufactured homes;
7. Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
8. Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this chapter;
9. Employing unlicensed ~~retail~~ salespersons *or installers*;
10. Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this chapter or selling to dealers not licensed pursuant to this chapter manufactured homes which are to be sold in the Commonwealth to buyers as defined in this chapter;
11. Having had a license revoked, suspended, or denied by the Board under this chapter; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this Commonwealth, would have been a violation under this chapter;
12. Defrauding any buyer, to the buyer's damage, or any other person in the conduct of the regulant's business; or
13. Failure to comply with any provisions of this chapter.

§ 36-85.21. Notice and hearing.

The Board shall not suspend, revoke, or deny a license or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the regulant or applicant against whom the same is directed; ~~and a hearing thereon has been held before the Board in accordance with the Administrative Process Act.~~ Reasonable written notice of the time and place of ~~the~~ *a conference* or hearing shall be given to the regulant or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such *conference* or hearing, the regulant or applicant shall have the right to be heard in person or through counsel. After the *conference* or hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question for violation of the provisions of this chapter *in accordance with the Administrative Process Act.* Immediate notice of any such action by the Board shall be given to the

183 regulant or applicant in the same manner as provided herein for furnishing notice of *a conference or*
184 hearing.

185 In the event of a conflict between the provisions of this section and the Administrative Process Act
186 (§ 9-6.14:1 et seq.), the provisions of the Administrative Process Act shall govern.

187 § 36-85.22. Installation requirements; effect on insurance policies.

188 Manufactured homes shall be ~~set-up~~ *installed* in accordance with the Code.

189 In the event that a manufactured home is insured against damage caused by windstorm and
190 subsequently sustains windstorm damage of a nature that indicated the manufactured home was not
191 ~~set-up~~ *installed* in the manner required by this section, the insurer issuing the homeowner's insurance
192 policy on the manufactured home shall not be relieved from meeting the obligations specified in the
193 insurance policy with respect to such damage on the basis that the manufactured home was not properly
194 ~~set-up~~ *installed*.

195 § 36-85.23. Warranties.

196 Each manufacturer, dealer, and supplier of manufactured homes shall warrant each new manufactured
197 home sold in ~~this the~~ Commonwealth, and the ~~dealer~~ *installer* shall warrant the ~~set-up~~ *installation* of
198 each manufactured home if ~~performed by or contracted for by the dealer~~, in accordance with the
199 warranty requirements prescribed by this section for a period of at least twelve months, measured from
200 the date of delivery of the manufactured home to the buyer. The warranty requirements for each
201 manufacturer, dealer, ~~and~~ supplier, ~~and~~ *installer* are as follows:

202 1. The manufacturer warrants that all structural elements, plumbing systems, heating, cooling (if any),
203 and fuel burning systems, electrical systems, and any other components included by the manufacturer are
204 manufactured and installed free from defect.

205 2. The dealer warrants:

206 a. ~~That~~ *that* any modifications or alterations made to the manufactured home by the dealer or
207 authorized by the dealer are free from defects. Alterations or modifications made by the dealer, without
208 written permission of the manufacturer, shall relieve the manufacturer of warranty responsibility as to
209 the item altered or modified and any damage resulting therefrom.

210 b. 3. *The installer warrants:*

211 a. That ~~set-up~~ *installation* operations performed by the ~~dealer~~ *or by persons under contract to the*
212 ~~dealer~~ *installer* on the manufactured home are accomplished in compliance with the applicable Code
213 standards for installation of manufactured homes.

214 e. b. That during the course of ~~set-up~~ *and* transportation ~~and~~ *installation* of the manufactured home
215 performed by the ~~dealer~~ *or by persons under contract to the dealer installer*, defects ~~do not~~ *that* occur to
216 the manufactured home *shall be corrected properly*.

217 3. 4. The supplier warrants that any warranties generally offered in the ordinary sale of his product
218 to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall
219 remain in effect notwithstanding the existence of a supplier's warranty.

220 § 36-85.29. Inspection of service records.

221 The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, *installer*,
222 supplier, or broker relating to a written warranty claim or complaint made to the Board against such
223 manufacturer, dealer, *installer*, supplier, or broker. Every regulant shall send to the Board upon request
224 and within ten days, a true copy of every document or record pertinent to any complaint or claim for
225 service.

226 § 36-85.31. Recovery fund to be established.

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

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

234 1. For a manufacturer - \$4,000 for each separate manufacturing facility payable in one installment or
235 \$4,400 payable at \$2,200 per year for two years.

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

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

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

239 5. *For an installer - \$500 per licensed location.*

240 C. All assessment fees collected under this article shall be deposited in the state treasury, and the
241 State Treasurer shall credit the amount paid into a special revenue fund from which appropriations may
242 be utilized by the Board in accordance with the express purposes set forth in this article. The assets of
243 the fund shall be invested in accordance with the advice of the State Treasurer. Interest earned on
244 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.

§ 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, *installer*, 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 by one regulant shall be limited to \$20,000;

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

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

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

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