WEST VIRGINIA CODE CHAPTER 21 ARTICLE 9

WV Legislature

§21-9-1. Short title.

This article shall be known as "The West Virginia Manufactured Housing Construction and Safety Standards Act."

WV Legislature

§21-9-2. Definitions.

(a) “Board” means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

(b) “Commissioner” means the Commissioner of the West Virginia State Division of Labor.

(c) “Contractor” means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

(1) A person who personally does work on a manufactured home which the person owns or leases; or

(2) A person who is licensed under §30-42-1 *et seq*., of this code and is performing work on a manufactured home pursuant to a contract with a person licensed under §21-9-9 of this code.

(d) “Dealer” means any person engaged in this state in the sale, leasing, or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) “Defect” includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

(f) “Distributor” means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) “Federal standards” means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the Secretary of HUD to implement that act.

(h) “HUD” means the United States Department of Housing and Urban Development.

(i) “Manufacturer” means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) “Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 or more feet in length or, when

WV Legislature

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; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

WV Legislature

§21-9-3. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

(a) There is hereby continued the West Virginia board of manufactured housing construction and safety, which shall consist of six members and the commissioner, who shall be chairman. At least two of the six members of the board shall represent and be consumers who are not related or employed in the manufactured housing and construction industry. The six members shall be appointed by the Governor by and with the advice and consent of the Senate. No more than three of the members appointed may be of the same political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section 5, article IV of the Constitution of the State of West Virginia, and shall certify that he or she is and during the term of his or her appointment shall remain free of any conflict of interest. The Governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of the person vacating the office. Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board constitutes a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his or her own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he or she is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in a proceeding for any other cause considered by him or her to be sufficient. Each member shall receive compensation not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

WV Legislature

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

(a) The board shall have the power to:

(1) Regulate its own procedure and practice;

(2) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and the federal standards;

(3) Advise the commissioner in all matters within his jurisdiction under this article;

(4) Prepare and submit to HUD a state plan application seeking the designation of the board as a state administrative agency for the purpose of administering and enforcing the federal standards and take all other action necessary to enable the board to serve as a state administrative agency;

(5) Study and report to the Governor and the Legislature on matters pertinent to the manufacture, distribution and sale of manufactured housing in this state and recommend changes in the law determined by the board to be necessary to promote consumer safety and protect purchasers of manufactured housing;

(6) Conduct hearings and presentations of views consistent with its rules and the federal standards;

(7) Approve or disapprove applications for licenses to manufacturers, dealers, distributors and contractors in accordance with section nine of this article, and revoke or suspend licenses in accordance with that section, and set the amounts of license fees and bonds or other forms of assurance in accordance with sections nine and ten of this article;

(8) Delegate to and authorize the commissioner to exercise the powers and duties of the board that the board may determine, including without limitation, the authority to approve, disapprove, revoke or suspend licenses in accordance with section nine of this article.

(b) Any person adversely affected by a decision of the board or the commissioner shall be afforded an opportunity for hearing before the board in accordance with section one, article five, chapter twenty-nine-a of this code.

WV Legislature

§21-9-5. Board designated as state administrative agency for manufactured home construction and safety standards; board to administer and enforce act.

The board is hereby designated as the state administrative agency for the administration and enforcement of the federal standards and is charged with the adoption, administration and enforcement of manufactured home construction and safety standards. The standards to be adopted shall be identical to the federal standards. The board shall discharge such duties consistent with the rules and regulations promulgated by HUD.

WV Legislature

§21-9-6. Inspection of certain facilities.

The board, by its authorized representatives, may enter, at reasonable times, any factory, warehouse or establishment in which manufactured homes are manufactured, stored or held for sale, for the purpose of ascertaining whether the federal standards and the standards promulgated by the board have been and are being met.

WV Legislature

§21-9-7. Monitoring inspection fee.

The board shall establish a monitoring inspection fee in an amount established by HUD. Such fee shall be paid by the manufacturer for each manufactured home produced in this state to the secretary of HUD, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally approved states based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer or purchaser in that state.

WV Legislature

§21-9-8. Maintenance and production of records and other information.

Each manufacturer, dealer, distributor and contractor shall establish and maintain such records, make such reports and provide such information as the board or the secretary of HUD may reasonably require in order to be able to determine whether such manufacturer, dealer, distributor or contractor has acted or is acting in compliance with this article, the rules and regulations promulgated by the board pursuant to this article or the federal standards and shall, upon request of a person duly designated by the board or the secretary of HUD, permit such person to inspect appropriate books, papers, records and documents relevant to determining whether such manufacturer, dealer, distributor or contractor has acted or is acting in compliance with this article and the federal standards.

WV Legislature

§21-9-9. License required; fees; form of license; display of license; denial, suspension, or revocation.

(a) No manufacturer, dealer, distributor, or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within 30 days after proper and complete application. All licenses shall expire on June 30 of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of 30 days.

(c) The annual license fees shall be in the amounts prescribed by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, $300;

(2) For dealers, $100;

(3) For distributors, $100; and

(4) For contractors, $50: *Provided*, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in §30-42-1 *et seq*., of this code, has paid the annual license fee under §30-42-8 of this code and has furnished bond or other assurance or fee under §21-9-10 of this code, he or she shall not be required to pay the annual license fee set forth in this section.

(d) The board shall prescribe the form of license and each license shall have affixed thereon the seal of the State Division of Labor.

(e) Each licensee shall conspicuously display the license in its established place of business.

(f) Pursuant to such rules and regulations as may be promulgated by the board, the board may deny the issuance of a license or revoke or suspend any license.

(g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the administration and enforcement of this article. Through June 30, 2019, amounts collected which are found to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division’s funding obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division’s funding obligations.

WV Legislature

§21-9-10. Licensee to furnish bond or other form of assurance.

(a) Each manufacturer, dealer, distributor or contractor which applies for a license under section nine of this article shall, at the time of making application for the license, furnish a surety bond or any other form of assurance of the applicant's financial responsibility permitted by the board by rule or regulation, the surety bond or other form of assurance to be in the amount prescribed by rule or regulation. In the event of forfeiture of any bond or security, the proceeds thereof shall be deposited in the special account continued in subsection (c) of this section.

(b) The board may assess an annual fee on licensees in satisfaction of the surety bond or other form of assurance required by subsection (a). This annual fee shall be in the amounts prescribed from time to time by legislative rules promulgated by the board but in no event less than the following amounts:

(1) For each manufacturer's licensed business location, $2,500;

(2) For each dealer's and/or distributor's licensed business location, $1,000;

(3) For each licensed contractor, $500.

(c) All fees collected from fees assessed pursuant to this section or the proceeds from the forfeiture of any bond or other security provided pursuant to this section or any fines paid to the board shall be deposited in the special account in the state Treasury known as the "State Manufactured Housing Recovery Fund". Expenditures from the fund shall be for the purposes set forth in subsection (d) of this section. The assets of the fund may be invested and reinvested by the board in accordance with applicable law. Interest revenues derived from the fund shall be used solely to maintain the fund. If the balance of the fund on June 30 of any year equals or exceeds $300,000, no assessments shall be collected from any previously licensed manufacturer, dealer, distributor or contractor for the next licensure period. New applicants for licensure shall pay the applicable assessment fee regardless of the balance of the fund. The board is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the board determines that the assessments are necessary to maintain the fiscal integrity of the fund. In no event may a special assessment be issued by the board until or unless the balance of the fund falls below $250,000.

(d) Moneys in the fund shall cover any misappropriation of funds of a purchaser or prospective purchaser of a manufactured home, any deception or false or fraudulent representations or deceitful practices in selling or representing a product, any failure by a licensee, because of bankruptcy, insolvency or other reason, to fulfill warranty obligations and any failure of the licensee, its agents or employees, to comply with federal standards, this article or any rules or regulations promulgated by the board pursuant to this article: Provided, That any payment to purchasers or prospective purchasers by the board from licensee bonds or other forms of financial assurance shall not include punitive or exemplary

WV Legislature

damages, any compensation for property damage other than to the manufactured home, any recompense for any personal injury or inconvenience, any reimbursement for alternate housing, or any payments for attorney fees, legal expenses or court costs.

WV Legislature

§21-9-11. State may act as primary inspection agency.

(a) This state, acting through the board, is hereby granted all powers and authority necessary to act as a primary inspection agency and to perform the functions of a "design approval primary inspection agency" and a "production inspection primary inspection agency", as the terms are defined in the federal standards. The board may apply to the secretary of HUD on behalf of this state to act as the primary inspection agency, including application for approval to act as the exclusive production inspection primary inspection agency in this state. The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to enable the board to act on behalf of this state as the primary inspection agency.

(b) The board may provide inspections to private home sites to aid in the resolution of a consumer complaint filed with the board by the home owner. The board may provide, free of charge, one initial and one follow-up inspection related to each consumer complaint: Provided, That the board may charge a licensee an inspection fee for any follow-up inspections which are necessitated by a licensee's failure to comply with an order of the board. The inspection fee may not exceed $75 per hour, plus expenses.

WV Legislature

§21-9-11a. Inspection of manufactured housing; deferral period for inspection and administrative remedies; notification to consumers of rights.

(a) Inspection of manufactured housing. When a purchaser or owner of a manufactured home files a written complaint with the board alleging defects in the manufacture, construction or installation of the manufactured home, and any additional information the board considers necessary to conduct an investigation, the board shall, within sixty days, to the extent feasible, cause an inspection of the manufactured home by one or more of its employees or person authorized and supervised by the board. The board shall provide the consumer a written report indicating whether the defects alleged by the complaint constitute violations of federal or state statutory or regulatory standards or good and customary manufacturing standards in the construction, design, manufacture or installation of the manufactured home. If the report indicates that the alleged defects constitute a violation, the board shall take such further administrative action as provided for in this article including, but not limited to, ordering the manufacturer, dealer or contractor to correct any defects.

(b) Period of exclusive administrative remedy. No purchaser or owner of a manufactured home may file a civil action seeking monetary recovery or damages for claims related to or arising out of the manufacture, acquisition, sale or installation of the manufactured home until the expiration of ninety days after the consumer or owner has filed a written complaint with the board. The board has a period of ninety days, commencing with the date of filing of the complaint, to investigate and take administrative action to order the correction of defects in the manufacture or installation of a manufactured home. This period of exclusive administrative authority may not prohibit the purchaser or owner of the manufactured home from seeking equitable relief in a court of competent jurisdiction to prevent or address an immediate risk of personal injury or property damage. The filing of a complaint under this article shall toll any applicable statutes of limitation during the ninety-day period but only if the applicable limitation period has not expired prior to the filing of the complaint.

(c) Notice of consumer rights. Every dealer or contractor who moves homes from one place to another shall provide written notification to every purchaser of a manufactured home of the availability of administrative assistance from the board in investigating and ordering corrections of any defect in the manufacture or installation of a manufactured home and the period of exclusive jurisdiction given to the board. The board may prescribe that the notice contain any information the board determines to be beneficial to the purchaser or owner of the manufactured home in exercising that person's rights under this section.

WV Legislature

§21-9-12. Violation of article; penalties; injunction.

(a) Any person who violates any of the following provisions relating to manufactured homes or any legislative rule proposed by the board pursuant to the provisions of this article, is liable to the state for a penalty, as determined by the board, not to exceed $1,000 for each violation. Each violation constitutes a separate violation with respect to each manufactured home, except that the maximum penalty may not exceed $1 million for any related series of violations occurring within one year from the date of the first violation. No person may:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into this state any manufactured home which is manufactured on or after the effective date of any applicable standard established by a rule promulgated by the board pursuant to the provisions of this article, or any applicable federal standard, which does not comply with that standard.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required by the provisions of this article.

(3) Fail to furnish notification of any defect as required by the provisions of 42 U.S.C. §5414.

(4) Fail to issue a certification required by the provisions of 42 U.S.C. §5415 or issue a certification to the effect that a manufactured home conforms to all applicable federal standards, when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(5) Fail to establish and maintain records, make reports, and provide information as the board may reasonably require to enable the board to determine whether there is compliance with the federal standards; or fail to permit, upon request of a person duly authorized by the board, the inspection of appropriate books, papers, records and documents relative to determining whether a manufacturer, dealer, distributor or contractor has acted or is acting in compliance with the provisions of this article or applicable federal standards.

(6) Issue a certification pursuant to the provisions of 42 U.S.C. §5403(a), when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(b) Subdivision (1), subsection (a) of this section does not apply to:

(1) The sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale;

(2) Any person who establishes that he did not have reason to know in the exercise of due care that the manufactured home is not in conformity with applicable federal standards; or

(3) Any person who, prior to the first purchase, holds a certificate by the manufacturer or

WV Legislature

importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless that person knows that the manufactured home does not conform to those standards.

(c) Any manufacturer, dealer, distributor or contractor who engages in business in this state without furnishing a bond or other form of assurance as required by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $50 for each day the violation continues.

(d) The board may institute proceedings in the circuit court of the county in which the alleged violation occurred or are occurring to enjoin any violation of the provisions of this article.

(e) Any person or officer, director, partner or agent of a corporation, partnership or other entity who willfully or knowingly violates any of the provisions listed in subsection (a) of this section, in any manner which threatens the health or safety of any purchaser, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(f) Nothing in this article applies to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured homes.

WV Legislature

§21-9-12a. Violation of cease and desist order; penalties.

(a) Upon a determination that a person is engaging in business without a valid license as required under the provisions of section nine of this article, the board or commissioner may immediately issue a cease and desist order requiring the person to cease all operations within this state. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person found to have been engaging in business in this state without a valid license as required under the provisions of section nine of this article.

(b) The board may institute proceedings in the circuit court of the county where the violation occurred, against any person violating a cease and desist order issued under the provisions of subsection (a) of this section.

(c) Any person continuing to engage in business in this state without a valid license as required under the provisions of section nine of this article, after the issuance of a cease and desist order under the provisions of subsection (a) of this section, is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in a county or regional jail for not less than thirty days nor more than six months or both a fine and confinement; and

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.

WV Legislature

§21-9-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature