

No. 508

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1988



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 508**

(By Senators *Sonkovich, Mr. President, et. al.*)



**PASSED** March 10, 1988

In Effect 90 days from Passage



# **ENROLLED**

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 508**

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,  
*original sponsors*)

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[Passed March 11, 1988; in effect ninety days from passage.]

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AN ACT to repeal article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article nine of said chapter, relating to the West Virginia manufactured housing construction and safety standards act; defining pertinent terms; creating the West Virginia board of manufactured housing and construction safety and providing for the appointment, qualifications, terms, oath, etc., of its members; providing when such members are disqualified and for their compensation; setting forth the general powers and duties of the board; affording adversely affected parties an opportunity for a hearing; designating the board as the agency charged with administering and enforcing certain federal standards regarding manufactured housing construction and safety; authorizing the board to enter any factory, warehouse or establishment to determine compliance with standards; requiring the payment of certain monitoring fees; requiring that persons involved with manufactured housing maintain and permit the board

to inspect records and other information; requiring each manufacturer, dealer, distributor and contractor to obtain annual license, pay a license fee and provide a bond or other form of assurance of financial responsibility; creating a special revenue fund; providing for recovery under bond or other form of assurance; authorizing the board to approve, disapprove, revoke or suspend such a license; authorizing the board to act as primary inspection agency; providing civil penalties for violation of particular provisions and exempting certain persons from civil penalties; and providing criminal penalties for violation of certain provisions.

*Be it enacted by the Legislature of West Virginia:*

That article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article nine be enacted in lieu thereof, to read as follows:

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.**

**§21-9-1. Short title.**

1 This article shall be known as “The West Virginia  
2 Manufactured Housing Construction and Safety Standards  
3 Act.”

**§21-9-2. Definitions.**

1 (a) “Board” means the West Virginia manufactured  
2 housing construction and safety board created in this  
3 article.  
4 (b) “Commissioner” means the commissioner of the  
5 West Virginia state department of labor.  
6 (c) “Contractor” means any person who performs  
7 operations in this state at the occupancy site which render a  
8 manufactured home fit for habitation. This definition does  
9 not include persons who do work on a manufactured home  
10 which is owned or leased by such person doing the work.  
11 Such operations include without limitation, installation or  
12 construction of the foundation, positioning, blocking,  
13 leveling, supporting, tying down, connecting utility  
14 systems, making minor adjustments or assembling multiple  
15 or expandable units. Such operations also include

16 transporting the unit to the occupancy site by other than a  
17 motor carrier regulated by the West Virginia public service  
18 commissioner.

19 (d) "Dealer" means any person engaged in this state in  
20 the sale, leasing or distribution of new manufactured  
21 homes, primarily to persons who in good faith purchase or  
22 lease a manufactured home for purposes other than resale.

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

27 (f) "Distributor" means person engaged in this state in  
28 the sale and distribution of manufactured homes for resale.

29 (g) "Federal standards" means the National  
30 Manufactured Housing Construction and Safety Standards  
31 Act of 1974 (42 U.S.C. §§ 5401, et seq.), and federal  
32 manufactured home construction and safety standards and  
33 regulations promulgated by the secretary of HUD to  
34 implement such act.

35 (h) "HUD" means the United States Department of  
36 Housing and Urban Development.

37 (i) "Manufacturer" means any person engaged in  
38 manufacturing or assembling manufactured homes,  
39 including any person engaged in importing manufactured  
40 homes for resale.

41 (j) "Manufactured home" means a structure,  
42 transportable in one or more sections, which in the  
43 traveling mode is eight body feet or more in width or forty  
44 body feet or more in length or, when erected on site, is three  
45 hundred twenty or more square feet, and which is built on a  
46 permanent chassis and designed to be used as a dwelling  
47 with or without a permanent foundation when connected to  
48 the required utilities, and includes the plumbing, heating,  
49 air-conditioning and electrical systems contained therein;  
50 except that such term shall include any structure which  
51 meets all the requirements of this definition except the size  
52 requirements and with respect to which the manufacturer  
53 voluntarily files a certificate which complies with the  
54 applicable federal standards. Calculations used to  
55 determine the number of square feet in a structure will be  
56 based on the structure's exterior dimensions measured at  
57 the largest horizontal projections when erected on site.

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

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

1 (a) There is hereby created the West Virginia board of  
2 manufactured housing construction and safety, which shall  
3 consist of six members and the commissioner, who shall be  
4 chairman. At least two of the six members of the said board  
5 shall represent and be consumers who are not related or  
6 employed in the manufactured housing and construction  
7 industry. The six members shall be appointed by the  
8 governor by and with the advice and consent of the Senate.  
9 No more than three of the members so appointed may be of  
10 the same political party.

11 (b) The members of the board shall be appointed for  
12 overlapping terms of six years, except that of the original  
13 appointments, two members shall be appointed for a term  
14 of two years, two members shall be appointed for a term of  
15 four years and two members shall be appointed for a term of  
16 six years, and in every instance until their respective  
17 successors have been appointed and qualified. Before  
18 entering upon the performance of his duties, each member  
19 shall take and subscribe to the oath required by section 5,  
20 article IV of the Constitution of the state of West Virginia,  
21 and shall certify that he is and during the term of his  
22 appointment shall remain free of any conflict of interest.  
23 The governor shall, within sixty days following the  
24 occurrence of a vacancy on the board, fill the same by  
25 appointing a person for the unexpired term of the person  
26 vacating said office. Any member may be removed by the  
27 governor in case of incompetency, neglect of duty, gross  
28 immorality or malfeasance in office.

29 (c) A majority of the members of the board shall  
30 constitute a quorum. The board shall meet at least once in  
31 each calendar quarter on a date fixed by the board. The  
32 commissioner may, upon his own motion, or shall upon the  
33 written request of three members of the board, call  
34 additional meetings of the board upon at least twenty-four  
35 hours' notice. No member shall participate in a proceeding

36 before the board to which a corporation, partnership or  
37 unincorporated association is a party, and of which he is or  
38 was at any time in the preceding twelve months a director,  
39 officer, owner, partner, employee, member or stockholder.  
40 A member may disqualify himself from participation in a  
41 proceeding for any other cause deemed by him to be  
42 sufficient. Each member shall receive one hundred dollars  
43 for each day or portion thereof spent in attending meetings  
44 of the board and shall be reimbursed for all reasonable and  
45 necessary expenses incurred incident to his duties as a  
46 member of the board.

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

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

- 1 (a) The board shall have the power to:  
2 (1) Regulate its own procedure and practice;  
3 (2) Promulgate reasonable rules to implement any  
4 provision of this article or of the federal standards, such  
5 rules to be promulgated in accordance with the provisions  
6 of article three, chapter twenty-nine-a of this code;  
7 (3) Advise the commissioner in all matters within his  
8 jurisdiction under this article;  
9 (4) Prepare and submit to HUD a state plan application  
10 seeking the designation of the board as a state  
11 administrative agency for the purpose of administering and  
12 enforcing the federal standards and take all other action  
13 necessary to enable the board to serve as such a state  
14 administrative agency;  
15 (5) Study and report to the governor and the Legislature  
16 on matters pertinent to the manufacture, distribution and  
17 sale of manufactured housing in this state and recommend  
18 such changes in the law as the board may determine to be  
19 necessary to promote consumer safety and protect  
20 purchasers of manufactured housing;  
21 (6) Conduct hearings and presentations of views  
22 consistent with its rules and regulations and the federal  
23 standards;

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

31 (8) Realizing the inability of the citizens of the state of  
32 West Virginia to obtain fire insurance on manufactured  
33 housing, the Legislature directs the board to conduct a  
34 study in regard to this crisis and to report to the Legislature  
35 by the fifth day of February, one thousand nine hundred  
36 eighty-nine. The report shall include specific  
37 recommendations to correct this crisis and improve the  
38 availability and reduce the cost of fire insurance.

39 (9) Delegate to and authorize the commissioner to  
40 exercise such powers and duties of the board as the board  
41 may from time to time determine, including without  
42 limitation the authority to approve, disapprove, revoke or  
43 suspend licenses in accordance with section nine of this  
44 article.

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

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

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

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

1 The board, by its authorized representatives, may enter,  
2 at reasonable times, any factory, warehouse or  
3 establishment in which manufactured homes are  
4 manufactured, stored or held for sale, for the purpose of

5 ascertaining whether the federal standards and the  
6 standards promulgated by the board have been and are  
7 being met.

**§21-9-7. Monitoring inspection fee.**

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

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

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

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

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



9 (b) All licenses shall be granted or refused within thirty  
10 days after proper and complete application. All licenses  
11 shall expire on the thirtieth day of June of each year, unless  
12 sooner revoked or suspended. Applications shall be deemed  
13 valid for a period of thirty days.

14 (c) The annual license fees shall be in the amounts  
15 prescribed from time to time by rules and regulations  
16 promulgated by the board but in no event less than the  
17 following amounts:

- 18 (1) For manufacturers, \$300;
- 19 (2) For dealers, \$100;
- 20 (3) For distributors, \$100; and
- 21 (4) For contractors, \$50.

22 (d) The board shall prescribe the form of license and  
23 each license shall have affixed thereon the seal of the state  
24 department of labor.

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

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

30 (g) The proceeds of such fees shall be deposited in a  
31 special account in the state treasury to be used by the  
32 department of labor for the administration of the provisions  
33 of this article.

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

1 (a) Each manufacturer, dealer, distributor or contractor  
2 which applies for a license under the preceding section  
3 shall, at the time of making application therefor, furnish a  
4 surety bond or such other form of assurance of the  
5 applicant's financial responsibility as the board may by  
6 rule or regulation permit, such surety bond or other form of  
7 assurance to be in such amount as the board may by rule or  
8 regulation prescribe. In the event of forfeiture of any such  
9 bond or security, the proceeds thereof shall be deposited in  
10 the special account created under section nine of this  
11 article.

12 (b) The bond or other form of assurance shall cover any  
13 misappropriation of funds of a purchaser or prospective  
14 purchaser of a manufactured home, any deception or false  
15 or fraudulent representations or deceitful practices in  
16 selling or representing a product, any failure by a licensee,

17 because of bankruptcy, insolvency or other reason, to fulfill  
 18 warranty obligations and any failure of the licensee, its  
 19 agents or employees, to comply with the federal standards,  
 20 this article or any rules or regulations promulgated by the  
 21 board pursuant to this article.

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

1 This state, acting through the board, is hereby granted all  
 2 powers and authority necessary to act as a primary  
 3 inspection agency and to perform the functions of a “design  
 4 approval primary inspection agency” and a “production  
 5 inspection primary inspection agency,” as such terms are  
 6 defined in the federal standards. The board may apply to  
 7 the secretary of HUD on behalf of this state to act as such a  
 8 primary inspection agency including application for  
 9 approval to act as the exclusive production inspection  
 10 primary inspection agency in this state. The board shall  
 11 promulgate such rules and regulations as are necessary to  
 12 enable the board to act on behalf of this state as such a  
 13 primary inspection agency.

**§21-9-12. Civil penalties; criminal penalties.**

1 (a) Any person who violates any of the following  
 2 provisions relating to manufactured homes or any rule or  
 3 regulation promulgated by the board pursuant to this  
 4 article shall be liable to the state for a penalty as determined  
 5 by the court of not to exceed one thousand dollars for each  
 6 violation. Each such violation shall constitute a separate  
 7 violation with respect to each manufactured home, except  
 8 that the maximum penalty shall not exceed one million  
 9 dollars for any related series of violations occurring within  
 10 one year from the date of the first violation. No person shall:

11 (1) Manufacture for sale, lease, sell, offer for sale or  
 12 lease, or introduce or deliver, or import into this state any  
 13 manufactured home which is manufactured on or after the  
 14 effective date of any applicable standard established by  
 15 rule or regulation promulgated by the board pursuant to  
 16 this article, or any applicable federal standard, which does  
 17 not comply with any such standard.

18 (2) Fail or refuse to permit access to or copying of  
 19 records, or fail to make reports or provide information or  
 20 fail or refuse to permit entry or inspection as required by  
 21 section six of this article.

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

24 (4) Fail to issue a certification required by 42 U.S.C.  
25 §5415 or issue a certification to the effect that a  
26 manufactured home conforms to all applicable federal  
27 standards, if such person knows or in the exercise of due  
28 care has reason to know that such certification is false or  
29 misleading in a material respect.

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

40 (6) Issue a certification pursuant to 42 U.S.C. §5403(a),  
41 if said person knows or in the exercise of due care has reason  
42 to know that said certification is false or misleading in a  
43 material respect.

44 (b) Subdivision (1) of subsection (a) of this section shall  
45 not apply to (i) the sale or the offer for sale of any  
46 manufactured home after the first purchase of it in good  
47 faith for purposes other than resale, (ii) any person who  
48 establishes that he did not have reason to know in the  
49 exercise of due care that such manufactured home is not in  
50 conformity with applicable federal standards or (iii) any  
51 person who, prior to such first purchase, holds a certificate  
52 by the manufacturer or importer of such manufactured  
53 home to the effect that such manufactured home conforms  
54 to all applicable federal standards, unless such person  
55 knows that such manufactured home does not so conform.

56 (c) Any manufacturer, dealer, distributor and  
57 contractor who engages in business in this state without a  
58 current license as required by section seven of this article or  
59 without furnishing a bond or other form of assurance as  
60 required by section eight of this article is guilty of a  
61 misdemeanor, and, upon conviction thereof, shall be fined  
62 not more than fifty dollars for each day such violation  
63 continues.

64 (d) Any person or officer, director, partner or agent of a  
65 corporation, partnership or other entity who willfully or  
66 knowingly violates any of the provisions listed in  
67 subsection (a) of this section, in any manner which  
68 threatens the health or safety of any purchaser, is guilty of a  
69 misdemeanor, and, upon conviction thereof, shall be fined  
70 not more than one thousand dollars or imprisoned in the  
71 county jail not more than one year, or both fined and  
72 imprisoned: *Provided*, That nothing in this article shall  
73 apply to any bank or financial institution engaged in the  
74 disposal of foreclosed or repossessed manufactured  
75 home(s).

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Samuel O. Williams*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Jedd C. Stella*  
.....  
Clerk of the Senate

*Donald S. Vogg*  
.....  
Clerk of the House of Delegates

*Sam Torburn*  
.....  
President of the Senate

*W. B. Allen*  
.....  
Speaker House of Delegates

The within *Approved* this the *25th*  
*March* day of ..... 1988.

*Anna Shreeve*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/18/58

Time 3:46 p.m.

RECEIVED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE