WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED
Committee Substitute
SENATE BILL NO. 518

(By Senators Antkowiak, President, et al.)

PASSED March 10, 1988
In Effect 90 days from Passage
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article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article nine be enacted in lieu thereof, to read as follows: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.

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


(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 department 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. This definition does not include persons who do work on a manufactured home which is owned or leased by such person doing the work. Such 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. Such operations also include
transporting the unit to the occupancy site by other than a
motor carrier regulated by the West Virginia public service
commissioner.
(d) "Dealer" means any person engaged in this state in
the sale, leasing or distribution of new 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 thereof not fit for
the ordinary use for which it was intended.
(f) "Distributor" means 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
manufactured home construction and safety standards and
regulations promulgated by the secretary of HUD to
implement such 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 forty
body feet or more in length or, when erected on site, is three
hundred twenty 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.

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

(a) There is hereby created 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 said 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 so 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 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 is and during the term of his 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 said 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 shall constitute 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 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 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 from participation in a
proceeding for any other cause deemed by him to be
sufficient. Each member shall receive one hundred dollars
for each day or portion thereof spent in attending meetings
of the board and shall be reimbursed for all reasonable and
necessary expenses incurred incident to his 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.
§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) Promulgate reasonable rules to implement any
provision of this article or of the federal standards, such
rules to be promulgated in accordance with the provisions
of article three, chapter twenty-nine-a of this code;
(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 such 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
such changes in the law as the board may determine 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 regulations 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 such licenses in accordance with such 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) Realizing the inability of the citizens of the state of West Virginia to obtain fire insurance on manufactured housing, the Legislature directs the board to conduct a study in regard to this crisis and to report to the Legislature by the fifth day of February, one thousand nine hundred eighty-nine. The report shall include specific recommendations to correct this crisis and improve the availability and reduce the cost of fire insurance.

(9) Delegate to and authorize the commissioner to exercise such powers and duties of the board as the board may from time to time 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.

§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.

§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.

§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.

§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.

§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 as required by rule or regulation
promulgated by the board.
(b) All licenses shall be granted or refused within thirty
days after proper and complete application. All licenses
shall expire on the thirtieth day of June of each year, unless
sooner revoked or suspended. Applications shall be deemed
valid for a period of thirty days.
(c) The annual license fees shall be in the amounts
prescribed from time to time by rules and regulations
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.
(d) The board shall prescribe the form of license and
each license shall have affixed thereon the seal of the state
department 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) The proceeds of such fees shall be deposited in a
special account in the state treasury to be used by the
department of labor for the administration of the provisions
of this article.
§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 the preceding section
shall, at the time of making application therefor, furnish a
surety bond or such other form of assurance of the
applicant's financial responsibility as the board may by
rule or regulation permit, such surety bond or other form of
assurance to be in such amount as the board may by rule or
regulation prescribe. In the event of forfeiture of any such
bond or security, the proceeds thereof shall be deposited in
the special account created under section nine of this
article.
(b) The bond or other form of assurance 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 the federal standards, this article or any rules or regulations promulgated by the board pursuant to this article.

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

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 such terms are defined in the federal standards. The board may apply to the secretary of HUD on behalf of this state to act as such a primary inspection agency including application for approval to act as the exclusive production inspection primary inspection agency in this state. The board shall promulgate such rules and regulations as are necessary to enable the board to act on behalf of this state as such a primary inspection agency.

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

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

(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 rule or regulation promulgated by the board pursuant to this article, or any applicable federal standard, which does not comply with any such 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 section six of this article.
(3) Fail to furnish notification of any defect as required by 42 U.S.C. §5414.

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

(5) Fail to establish and maintain such records, make such reports, and provide such 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 this article or the federal standards.

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

(b) Subdivision (1) of subsection (a) of this section shall not apply to (i) 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, (ii) any person who establishes that he did not have reason to know in the exercise of due care that such manufactured home is not in conformity with applicable federal standards or (iii) any person who, prior to such first purchase, holds a certificate by the manufacturer or importer of such manufactured home to the effect that such manufactured home conforms to all applicable federal standards, unless such person knows that such manufactured home does not so conform.

(c) Any manufacturer, dealer, distributor and contractor who engages in business in this state without a current license as required by section seven of this article or without furnishing a bond or other form of assurance as required by section eight of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than fifty dollars for each day such violation continues.
(d) 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 one thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned: Provided, That nothing in this article shall apply to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured home(s).
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within disapproved this the 25th day of March, 1988.

Governor