

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 952
HOUSE BILL 1059

AN ACT TO AMEND CHAPTER 143 OF THE GENERAL STATUTES OF NORTH CAROLINA TO CREATE THE NORTH CAROLINA MANUFACTURED HOUSING BOARD AND TO PROVIDE FOR THE LICENSING AND REGULATION OF THE MANUFACTURED HOUSING INDUSTRY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-144 through G.S. 143-151.5, presently constituted as Article 9A of G.S. Chapter 143 and entitled "Uniform Standards Code for Mobile Homes," are hereby redesignated as Part 2 of Article 9A, Chapter 143.

Sec. 2. Chapter 143 of the General Statutes of North Carolina is hereby amended by adding a new Part 1 of Article 9A to read as follows:

"ARTICLE 9A.

"Part 1.

"North Carolina Manufactured Housing Board.

"§ 143-143.8. **Purpose.** — The General Assembly finds that mobile homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the mobile home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in mobile homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of mobile home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all segments of the mobile home industry. The General Assembly also finds that it is reasonable and proper for the mobile home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations.

"§ 143-143.9. **Definitions.** — The following words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) 'Board' means the North Carolina Manufactured Housing Board.
- (2) 'Commissioner' means the Commissioner of Insurance of the State of North Carolina.
- (3) 'Department' means the Department of Insurance of the State of North Carolina.
- (4) 'Manufactured home' or 'mobile home' means a structure, transportable in one or more sections, which, in the travelling mode, is eight 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.

- (5) 'Person' means any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.
- (6) 'Manufactured home manufacturer' or 'manufacturer' means any person, resident or nonresident, who manufactures or assembles manufactured homes for sale in North Carolina.
- (7) 'Manufactured home dealer' or 'dealer' means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys, sells or deals in three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-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.
- (8) 'Supplier' means the original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer.
- (9) 'Buyer' means a person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.
- (10) 'Set-up' 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 by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, 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 North Carolina Utilities Commission.
- (11) 'Set-up contractor' means a person who engages in the business of performing set-up operations for compensation in North Carolina.
- (12) 'Substantial defect' means any substantial 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 structural element, utility system or component part of the manufactured home which fails to comply with the Code.
- (13) 'Code' means the appropriate standards adopted by the Commissioner and established by the Department of Housing and Urban Development pursuant to the Federal Mobile Home Construction and Safety Standards Act of 1974 for single family manufactured homes.
- (14) 'Responsible party' means a manufacturer, dealer, supplier, or set-up contractor.
- (15) 'Manufactured home salesman' or 'salesman' means any person employed as a salesman by a manufactured home dealer to sell manufactured homes to buyers.

"§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings. —

(a) There is hereby created the North Carolina Manufactured Housing Board within the Department of Insurance. The Board shall be composed of nine members as follows:

1. The Commissioner of Insurance or his designee
2. A manufactured home manufacturer
3. A manufactured home dealer
4. A representative of the banking and finance business
5. A representative of the insurance industry
6. A manufactured home supplier
7. A set-up contractor
8. Two representatives of the general public.

The Commissioner of Insurance or his designee shall serve as Chairman of the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The Speaker of the House of Representatives shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The President Pro Tempore of the Senate shall appoint the manufactured home supplier and set-up contractor. The Commissioner of Insurance shall appoint two representatives of the general public. Except for the representatives from the general public, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years, to begin on October 1, 1981, except that those first appointed as the representative of the banking and finance business, the representative of the insurance business, the manufactured home supplier, and the set-up contractor shall serve for terms of one year. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner of Insurance and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the Treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article.

(b) In accordance with the provisions of this Article, the North Carolina Manufactured Housing Board shall have the following powers and duties:

- (1) To issue licenses to manufacturers, dealers, salesmen and set-up contractors;
- (2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salesmen;
- (3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry; and
- (4) To promulgate rules in accordance with Chapter 150A of the General Statutes as are necessary to carry out the provisions of this Article.

"§ 143-143.11. License required; application for license. — (a) It shall be unlawful for any manufactured home manufacturer, dealer, salesman or set-up contractor to engage in business

as such in this State without first obtaining a license from the North Carolina Manufactured Housing Board, as provided in this Article.

(b) Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by the required fee established by the Board. Such fee shall not exceed twenty-five dollars (\$25.00) for any license.

(c) In such application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 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 a license is sought.

(d) All licenses that are granted shall expire, unless sooner revoked or suspended, on June 30 of each year following the date of issue.

(e) Every registrant under this Chapter shall, on or before the first day of July of each year, obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee; and upon failure to renew, his license shall automatically expire; but such license may be renewed at any time within one year 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, salesman or set-up contractor after receipt of notice of expiration and is otherwise eligible for registration under the provisions of this Chapter.

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed fifty dollars (\$50.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesman will be allowed to engage in business during the time period after making application for a license but before such license is granted.

"§ 143-143.12. Bond required. — (a) A person licensed as a manufactured home salesman shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent thereof in the following amounts:

- (1) For a manufacturer, two thousand dollars (\$2,000) per manufactured home manufactured in the prior license year, up to a maximum of fifty thousand dollars (\$50,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year;
- (2) For a dealer who buys, sells, or deals in manufactured homes and who has four or less places of business, the amount shall be twenty-five thousand dollars (\$25,000);
- (3) For a dealer who buys, sells, or deals in manufactured homes and who has more than four places of business, the amount shall be fifty thousand dollars (\$50,000);
- (4) For a set-up contractor, the amount shall be five thousand dollars (\$5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent thereof shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article shall have the right to institute an action to recover against such licensee and the surety.

(d) The Board is authorized to promulgate rules in accordance with Chapter 150A of the General Statutes consistent with this Article to assure satisfaction of claims.

"§ 143-143.13. Grounds denying, suspending or revoking license; civil penalty. — (a) 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 post an adequate corporate surety bond, cash bond or fixed value equivalent thereof;
- (3) engaging in the business of manufactured home manufacturer, dealer, salesman or set-up contractor without first obtaining a license from the Board;
- (4) failure to comply with the warranty service obligations and claims procedure established by this Article;
- (5) failure to comply with the set-up and tie-down requirements established by this Article;
- (6) misappropriation of funds belonging to the buyer of a manufactured home;
- (7) use of unfair methods of competition or unfair or deceptive commercial acts or practices;
- (8) failure to comply with any provision of this Article.

(b) In addition to the authority to deny, suspend or revoke a license under this Article, the Board shall also have the authority to impose a civil penalty upon any person, firm, or corporation violating the provisions of this Article. A civil penalty shall not exceed two hundred fifty dollars (\$250.00) for each violation.

"§ 143-143.14. 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 licensee or applicant against whom the same is directed, and a hearing thereon has been held before the Board. At least 30 days' written notice of the time and place of the hearing shall be given to the licensee 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 hearing, the licensee or applicant shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question, or to impose a civil penalty for violation of the provisions of this Article. Immediate notice of any such action by the Board shall be given to the licensee or applicant in the same manner as provided herein for furnishing notice of the hearing.

"§ 143-143.15. Set-up and tie-down requirements. — (a) Manufactured homes shall be set up and anchored in accordance with the standards established by the Federal Mobile Home Construction and Safety Standards Act of 1974 for single family manufactured homes or the State of North Carolina 'Standards for Installation of Mobile Homes' adopted by the Commissioner of Insurance, whichever is applicable.

(b) In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicates the manufactured home was not anchored or tied down in the manner required by this section, the insurer issuing the homeowner's insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the mobile home was not properly anchored or tied down.

"§ 143-143.16. Warranties. — Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State and the set up of each such

manufactured home in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

- (1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial defect.
- (2) The dealer warrants:
 - (i) That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any damage resulting therefrom.
 - (ii) That set-up operations performed by the dealer on the manufactured home are performed in compliance with applicable federal or State standards for the installation of manufactured homes.
 - (iii) That, during the course of set-up and transportation of the manufactured home performed by the dealer, substantial defects do not occur to the manufactured home.
- (3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.
- (4) The set-up contractor warrants that set-up operations are performed in compliance with applicable Federal or State standards for the installation of manufactured homes, and that during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home.

"§ 143-143.17. Presenting claims for warranties and substantial defects. — (a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided by this Article. A record shall be made of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant of that fact, and shall also in writing immediately notify the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing herein shall prevent such a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance.

"§ 143-143.18. Warranty service. — (a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every such service agreement shall be in writing.

Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by the provisions of this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days of receipt of the written notification of the warranty claim, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (1) inadequate heating in freezing weather; (2) failure of sanitary facilities; (3) electrical shock, leaking gas; or (4) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the mobile home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier shall have the right to complain to the Board when warranty service obligations under this Article are not being enforced.

"§ 143-143.19. Dealer alterations. — (a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a manufactured home dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to promulgate rules in accordance with Chapter 150A of the General Statutes which define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

"§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

— In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home.

"§ 143-143.21. Limitation on damages. — If the buyer fails to accept delivery of a manufactured home, the seller may retain actual damages according to the following terms:

- (1) If the manufactured home is in the seller's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be one hundred dollars (\$100.00).
- (2) If the manufactured home is a single-wide unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be five hundred dollars (\$500.00).
- (3) If the manufactured home is larger than a single-wide unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be one thousand dollars (\$1,000).

Nothing in this Article shall prevent the parties to a manufactured home sales contract from contracting for liquidated damages otherwise permitted by law.

"§ 143-143.22. Inspection of service records. — The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against such manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a true copy of every document or record pertinent to any complaint or claim for service.

"§ 143-143.23. Other remedies not excluded. — Nothing in this Article nor any decision by the Board shall limit any right or remedy available to the buyer at common law or under any other statute, nor limit any power or duty of the Attorney General."

Sec. 3. G.S. 20-288(e) is hereby amended by adding the following sentence at the end thereof:

"This subsection shall not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Sec. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 5. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 6. This act shall become effective July 1, 1982; provided, however, that the provisions of G.S. 143-143.10 contained in Section 2 of this act shall become effective upon ratification, to the end that the North Carolina Manufactured Housing Board may be appointed, conduct its organizational activities, and be prepared to implement the provisions of this act upon its effective date.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.