
SUBSTITUTE HOUSE BILL 2949

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Housing (originally sponsored by Representative Cooper)

Read first time 02/07/92.

1 AN ACT Relating to consumer remedies for purchasers of manufactured
2 homes; amending RCW 46.70.070, 46.70.075, 46.70.135, and 46.70.180;
3 adding new sections to chapter 46.70 RCW; and adding a new chapter to
4 Title 59 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the purchase
7 of a manufactured home is a sizable investment for most families. The
8 legislature also finds that consumer remedies for purchases of
9 manufactured homes lack clarity and are often inadequate. Therefore,
10 the legislature declares that it is the purpose of this act to
11 strengthen consumer warranties, clarify escrow provisions, and
12 establish a recovery fund with respect to manufactured housing sales.

1 NEW SECTION. **Sec. 2.** The manufactured housing transaction
2 recovery fund is created in the custody of the state treasurer. All
3 assessment fees collected from manufactured home manufacturers,
4 dealers, and installers in accordance with section 3 of this act shall
5 be deposited into the fund. All interest earned by deposits in the
6 fund shall accrue to the fund. The fund is not subject to allotment
7 reductions under chapter 43.88 RCW, and no appropriation is required
8 for expenditures. The department of community development may be
9 reimbursed from the fund for its costs incurred for investigating and
10 enforcing claims under this chapter. Only the director of the
11 department of community development, or the director's designee, may
12 authorize expenditures from the fund.

13 NEW SECTION. **Sec. 3.** Each manufactured home manufacturer,
14 dealer, and installer doing business in the state of Washington shall
15 pay an initial assessment fee to the manufactured housing transaction
16 recovery fund established in section 2 of this act. The fee shall be
17 assessed as follows:

18 (1) A manufacturer shall pay the sum of three thousand dollars for
19 selling manufactured homes in the state;

20 (2) A dealer shall pay the sum of five hundred dollars for each
21 retail location in the state;

22 (3) An installer shall pay five hundred dollars for each business
23 location in the state.

24 The fee shall be collected by the licensing or certifying agency,
25 or its agents, at the time the manufacturer, dealer, or installer
26 submits an application for certification or licensure or renewal. A
27 manufacturer or dealer who also acts as an installer of manufactured
28 homes is not required to pay the fee required for an installer, but
29 must pay the fee assessed for a manufacturer or dealer. This fee shall

1 not be collected more than once except as provided in section 4 of this
2 act. The department of licensing, the department of labor and
3 industries, and the department of community development shall consult
4 with each other before adopting rules necessary to implement this
5 section. The fee shall be forwarded to the state treasurer for deposit
6 into the manufactured housing transaction recovery fund.

7 NEW SECTION. **Sec. 4.** Whenever the balance of the manufactured
8 housing transaction recovery fund falls below two hundred fifty
9 thousand dollars, the department of community development may reimpose
10 the fee established under section 3 of this act.

11 NEW SECTION. **Sec. 5.** A buyer of a manufactured home who
12 wishes to recover damages from the manufactured housing transaction
13 recovery fund must file an application with the department of community
14 development. The department shall review the application and determine
15 the buyer's eligibility for recovery in accordance with section 6 of
16 this act. Any decision of the department concerning eligibility may be
17 appealed as an adjudicative proceeding under the administrative
18 procedure act, chapter 34.05 RCW.

19 NEW SECTION. **Sec. 6.** (1) A buyer of a manufactured home is
20 eligible to recover from the manufactured housing transaction recovery
21 fund, if the following conditions are met:

22 (a) The buyer obtains a final judgment in any court of competent
23 jurisdiction against a manufactured home manufacturer, dealer, or
24 installer;

25 (b) The judgment is on the grounds of failure to honor a warranty
26 or guarantee, or for fraud, or for willful misrepresentation of the
27 kind or quality of the product sold or the work provided, or for

1 conversion, arising directly out of any transaction that occurs after
2 July 1, 1992;

3 (c) The buyer has presented evidence that the judgment has been
4 executed against all the assets of the judgment debtor or presented
5 satisfactory evidence that the judgment debtor is judgment proof;

6 (d) The claim against the fund is filed within one year from the
7 date of the judgment;

8 (e) The buyer has agreed to subrogate to the department all rights
9 against the judgment debtor to the extent of the payment; and

10 (f) The fund balance is sufficient to pay the award.

11 (2) The amount of damages awarded from the fund is limited to the
12 actual cost of repairs to the manufactured home. No punitive damages,
13 court costs, or attorneys' fees may be awarded from the fund.

14 (3) If the aggregate of claims against the fund exceeds the balance
15 in the fund, then the money in the fund shall be prorated by the
16 department of community development among the claimants and paid in
17 proportion to the amounts of their awards remaining unpaid.

18 NEW SECTION. **Sec. 7.** (1) The judgment debtor is liable for
19 repayment in full for the amount arising from claims against the debtor
20 paid from the fund, plus interest.

21 (2) A discharge in bankruptcy does not relieve a judgment debtor
22 from the responsibility from repaying moneys paid from the fund to
23 satisfy claims against the judgment debtor.

24 NEW SECTION. **Sec. 8.** If a claim is paid from the fund, or the
25 manufacturer, dealer, or installer fails to pay the assessment required
26 under section 3 of this act, the department that licensed or certified
27 the judgment debtor shall suspend or deny the judgment debtor's
28 license, registration, or certification until the judgment debtor has

1 paid the assessment or repaid the fund the amounts paid on its behalf,
2 plus interest. The department of licensing shall suspend a judgment
3 debtor's license in accordance with chapter 46.70 RCW. The department
4 of labor and industries shall suspend a judgment debtor's registration
5 in accordance with chapter 18.27 RCW. The department of community
6 development, the department of licensing, and the department of labor
7 and industries shall consult with each other before adopting rules
8 necessary to implement this section.

9 NEW SECTION. **Sec. 9.** For purposes of this chapter, "judgment
10 debtor" means a manufactured housing manufacturer, dealer, or installer
11 who is required to pay damages to a buyer of a manufactured home under
12 a final judgment rendered by a court of competent jurisdiction.

13 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act shall
14 constitute a new chapter in Title 59 RCW.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.70 RCW
16 to read as follows:

17 (1) In addition to the requirements contained in RCW 46.70.135,
18 each sale of a new manufactured home in this state is made with an
19 implied warranty that the manufactured home conforms in all material
20 aspects to applicable federal and state laws and regulations
21 establishing standards of safety or quality, and with implied
22 warranties of merchantability and fitness for a particular purpose as
23 permanent housing in the climate of the state.

24 (2) The implied warranties contained in this section may not be
25 waived, limited, or modified. Any provision that attempts to waive,
26 limit, or modify the implied warranties contained in this section is
27 void and unenforceable.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.70 RCW
2 to read as follows:

3 Any dealer, manufacturer, or contractor who installs a manufactured
4 home warrants that the manufactured home is installed in accordance
5 with the state installation code, chapter 296-150B WAC. The warranty
6 contained in this section may not be waived, limited, or modified. Any
7 provision attempting to waive, limit, or modify the warranty contained
8 in this section is void and unenforceable. This section does not apply
9 when the manufactured home is installed by the purchaser of the home.

10 **Sec. 13.** RCW 46.70.070 and 1989 c 337 s 15 are each amended to
11 read as follows:

12 (1) Before issuing a vehicle dealer's license, the department shall
13 require the applicant to file with the department a surety bond in the
14 amount of:

15 (a) Fifteen thousand dollars for motor vehicle dealers;

16 (b) ~~((Thirty))~~ Ten thousand dollars for mobile home~~((7))~~ and park
17 trailer dealers, and fifteen thousand dollars for travel trailer
18 dealers~~((: PROVIDED, That if such dealer does not deal in mobile homes~~
19 ~~or park trailers such bond shall be fifteen thousand dollars))~~;

20 (c) Five thousand dollars for miscellaneous dealers, running to the
21 state, and executed by a surety company authorized to do business in
22 the state. Such bond shall be approved by the attorney general as to
23 form and conditioned that the dealer shall conduct his or her business
24 in conformity with the provisions of this chapter.

25 Any retail purchaser, consignor who is not a motor vehicle dealer,
26 or a motor vehicle dealer who has purchased from a wholesale dealer,
27 who has suffered any loss or damage by reason of any act by a dealer
28 which constitutes a violation of this chapter shall have the right to
29 institute an action for recovery against such dealer and the surety

1 upon such bond. However, under this section, motor vehicle dealers who
2 have purchased from wholesale dealers may only institute actions
3 against wholesale dealers and their surety bonds. Successive
4 recoveries against ~~((said))~~ the bond ~~((shall be))~~ is permitted, but the
5 aggregate liability of the surety to all persons shall in no event
6 exceed the amount of the bond. Upon exhaustion of the penalty of
7 ~~((said))~~ the bond or cancellation of the bond by the surety the vehicle
8 dealer license shall automatically be deemed canceled.

9 (2) The bond for any vehicle dealer licensed or to be licensed
10 under more than one classification shall be the highest bond required
11 for any such classification.

12 (3) Vehicle dealers shall maintain a bond for each business
13 location in this state and bond coverage for all temporary subagencies.

14 **Sec. 14.** RCW 46.70.075 and 1981 c 152 s 3 are each amended to read
15 as follows:

16 Before issuing a manufacturer license to a manufacturer of mobile
17 homes or travel trailers, the department shall require the applicant to
18 file with the department a surety bond in the amount of ~~((forty))~~
19 twenty thousand dollars ~~((in the case of a mobile home manufacturer and~~
20 ~~twenty thousand dollars in the case of a travel trailer manufacturer))~~,
21 running to the state and executed by a surety company authorized to do
22 business in the state. ~~((Such))~~ The bond shall be approved by the
23 attorney general as to form and conditioned that the manufacturer shall
24 conduct his or her business in conformity with the provisions of this
25 chapter and with all standards set by the state of Washington or the
26 federal government pertaining to the construction or safety of such
27 vehicles. Any retail purchaser or vehicle dealer who has suffered any
28 loss or damage by reason of breach of warranty or by any act by a
29 manufacturer which constitutes a violation of this chapter or a

1 violation of any standards set by the state of Washington or the
2 federal government pertaining to construction or safety of such
3 vehicles has the right to institute an action for recovery against such
4 manufacturer and the surety upon such bond. Successive recoveries
5 against the bond shall be permitted, but the aggregate liability of the
6 surety to all persons shall in no event exceed the amount of the bond.
7 Upon exhaustion of the penalty of the bond or cancellation of the bond
8 by the surety the manufacturer license is automatically deemed
9 canceled.

10 **Sec. 15.** RCW 46.70.135 and 1989 c 343 s 22 are each amended to
11 read as follows:

12 Mobile home manufacturers and mobile home dealers who sell mobile
13 homes to be assembled on site and used as residences in this state
14 shall conform to the following requirements:

15 (1) No new manufactured home may be sold unless the purchaser is
16 provided with a manufacturer's written warranty for construction of the
17 home in compliance with the Magnuson-Moss Warranty Act (88 Stat. 2183;
18 15 U.S.C. Sec. 47 et seq.; 15 U.S.C. Sec. 2301 et seq.).

19 (2) No new manufactured home may be sold unless the purchaser is
20 provided with a dealer's written warranty for all installation services
21 performed by the dealer.

22 (3) The warranties required by subsections (1) and (2) of this
23 section shall be valid for a minimum of one year measured from the date
24 of (~~sale~~) delivery and shall not be invalidated by resale by the
25 original purchaser to a subsequent purchaser or by the certificate of
26 ownership being eliminated or not issued as described in chapter 65.20
27 RCW. Copies of the warranties shall be given to the purchaser upon
28 signing a purchase agreement and shall include an explanation of
29 remedies available to the purchaser under state and federal law for

1 breach of warranty, the name and address of the federal department of
2 housing and urban development and the state departments of licensing
3 and labor and industries, and a brief description of the duties of
4 these agencies concerning mobile homes.

5 (4) Warranty service shall be completed within forty-five days
6 after the owner gives written notice of the defect unless there is a
7 bona fide dispute between the parties. Warranty service for a defect
8 affecting health or safety shall be completed within seventy-two hours
9 of receipt of written notice. Warranty service shall be performed on
10 site and a written work order describing labor performed and parts used
11 shall be completed and signed by the service agent and the owner. If
12 the owner's signature cannot be obtained, the reasons shall be
13 described on the work order. Work orders shall be retained by the
14 dealer or manufacturer for a period of three years.

15 (5) Before delivery of possession of the home to the purchaser, an
16 inspection shall be performed by the dealer or his or her agent and by
17 the purchaser or his or her agent which shall include a test of all
18 systems of the home to insure proper operation. At the time of the
19 inspection, the purchaser shall be given copies of all documents
20 required by state or federal agencies to be supplied by the
21 manufacturer with the home which have not previously been provided as
22 required under subsection (3) of this section, and the dealer shall
23 complete any required purchaser information card and forward the card
24 to the manufacturer. A purchaser is deemed to have taken delivery of
25 the home when the inspection and systems test of the home have been
26 completed subsequent to the installation of the manufactured home.

27 (6) Manufacturer and dealer advertising which states the dimensions
28 of a home shall not include the length of the draw bar assembly in a
29 listed dimension, and shall state the square footage of the actual
30 floor area.

1 **Sec. 16.** RCW 46.70.180 and 1990 c 44 s 14 are each amended to read
2 as follows:

3 Each of the following acts or practices is unlawful:

4 (1) To cause or permit to be advertised, printed, displayed,
5 published, distributed, broadcasted, televised, or disseminated in any
6 manner whatsoever, any statement or representation with regard to the
7 sale or financing of a vehicle which is false, deceptive, or
8 misleading, including but not limited to the following:

9 (a) That no down payment is required in connection with the sale of
10 a vehicle when a down payment is in fact required, or that a vehicle
11 may be purchased for a smaller down payment than is actually required;

12 (b) That a certain percentage of the sale price of a vehicle may
13 be financed when such financing is not offered in a single document
14 evidencing the entire security transaction;

15 (c) That a certain percentage is the amount of the service charge
16 to be charged for financing, without stating whether this percentage
17 charge is a monthly amount or an amount to be charged per year;

18 (d) That a new vehicle will be sold for a certain amount above or
19 below cost without computing cost as the exact amount of the factory
20 invoice on the specific vehicle to be sold;

21 (e) That a vehicle will be sold upon a monthly payment of a certain
22 amount, without including in the statement the number of payments of
23 that same amount which are required to liquidate the unpaid purchase
24 price.

25 (2) To incorporate within the terms of any purchase and sale
26 agreement any statement or representation with regard to the sale or
27 financing of a vehicle which is false, deceptive, or misleading,
28 including but not limited to terms that include as an added cost to the
29 selling price of a vehicle an amount for licensing or transfer of title

1 of that vehicle which is not actually due to the state, unless such
2 amount has in fact been paid by the dealer prior to such sale.

3 (3) To set up, promote, or aid in the promotion of a plan by which
4 vehicles are to be sold to a person for a consideration and upon
5 further consideration that the purchaser agrees to secure one or more
6 persons to participate in the plan by respectively making a similar
7 purchase and in turn agreeing to secure one or more persons likewise to
8 join in said plan, each purchaser being given the right to secure
9 money, credits, goods, or something of value, depending upon the number
10 of persons joining the plan.

11 (4) To commit, allow, or ratify any act of "bushing" which is
12 defined as follows: Taking from a prospective buyer of a vehicle a
13 written order or offer to purchase, or a contract document signed by
14 the buyer, which:

15 (a) Is subject to the dealer's, or his or her authorized
16 representative's future acceptance, and the dealer fails or refuses
17 within forty-eight hours, exclusive of Saturday, Sunday, or legal
18 holiday, and prior to any further negotiations with said buyer, to
19 deliver to the buyer either the dealer's signed acceptance or all
20 copies of the order, offer, or contract document together with any
21 initial payment or security made or given by the buyer, including but
22 not limited to money, check, promissory note, vehicle keys, a trade-in,
23 or certificate of title to a trade-in; or

24 (b) Permits the dealer to renegotiate a dollar amount specified as
25 trade-in allowance on a vehicle delivered or to be delivered by the
26 buyer as part of the purchase price, for any reason except substantial
27 physical damage or latent mechanical defect occurring before the dealer
28 took possession of the vehicle and which could not have been reasonably
29 discoverable at the time of the taking of the order, offer, or
30 contract; or

1 (c) Fails to comply with the obligation of any written warranty or
2 guarantee given by the dealer requiring the furnishing of services or
3 repairs within a reasonable time.

4 (5) To commit any offense relating to odometers, as such offenses
5 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A
6 violation of this subsection is a class C felony punishable under
7 chapter 9A.20 RCW.

8 (6) For any vehicle dealer or vehicle salesman to refuse to
9 furnish, upon request of a prospective purchaser, the name and address
10 of the previous registered owner of any used vehicle offered for sale.

11 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
12 46.37.425.

13 (8) To commit any offense relating to a dealer's temporary license
14 permit, including but not limited to failure to properly complete each
15 such permit, or the issuance of more than one such permit on any one
16 vehicle.

17 (9) For a dealer, salesman, or mobile home manufacturer, having
18 taken an instrument or cash "on deposit" from a purchaser prior to the
19 delivery of the bargained-for vehicle, to commingle ((said)) the "on
20 deposit" funds with assets of the dealer, salesman, or mobile home
21 manufacturer instead of holding ((said)) the "on deposit" funds as
22 trustee in a separate trust account until the purchaser has taken
23 delivery of the bargained-for vehicle. Delivery of a manufactured home
24 shall be deemed to occur when the inspection and systems test of the
25 home is completed in accordance with RCW 46.70.135(5). Failure,
26 immediately upon receipt, to endorse "on deposit" instruments to such
27 a trust account, or to set aside "on deposit" cash for deposit in such
28 trust account, and failure to deposit such instruments or cash in such
29 trust account by the close of banking hours on the day following
30 receipt thereof, shall be evidence of intent to commit this unlawful

1 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a
2 separate trust account which equals his or her customary total customer
3 deposits for vehicles for future delivery. For purposes of this
4 section, "on deposit" funds received from a purchaser of a manufactured
5 home means those funds that a seller requires a purchaser to advance
6 before ordering the manufactured home, but does not include any loan
7 proceeds or moneys that might have been paid on an installment
8 contract.

9 (10) For a dealer or manufacturer to fail to comply with the
10 obligations of any written warranty or guarantee given by the dealer or
11 manufacturer requiring the furnishing of goods and services or repairs
12 within a reasonable period of time, or to fail to furnish to a
13 purchaser, all parts which attach to the manufactured unit including
14 but not limited to the undercarriage, and all items specified in the
15 terms of a sales agreement signed by the seller and buyer.

16 (11) Being a manufacturer, other than a motorcycle manufacturer
17 governed by chapter 46.94 RCW, to:

18 (a) Coerce or attempt to coerce any vehicle dealer to order or
19 accept delivery of any vehicle or vehicles, parts or accessories, or
20 any other commodities which have not been voluntarily ordered by the
21 vehicle dealer: PROVIDED, That recommendation, endorsement,
22 exposition, persuasion, urging, or argument are not deemed to
23 constitute coercion;

24 (b) Cancel or fail to renew the franchise or selling agreement of
25 any vehicle dealer doing business in this state without fairly
26 compensating the dealer at a fair going business value for his or her
27 capital investment which shall include but not be limited to tools,
28 equipment, and parts inventory possessed by the dealer on the day he or
29 she is notified of such cancellation or termination and which are still
30 within the dealer's possession on the day the cancellation or

1 termination is effective, if: (i) The capital investment has been
2 entered into with reasonable and prudent business judgment for the
3 purpose of fulfilling the franchise; and (ii) (~~said~~) the cancellation
4 or nonrenewal was not done in good faith. Good faith is defined as the
5 duty of each party to any franchise to act in a fair and equitable
6 manner towards each other, so as to guarantee one party freedom from
7 coercion, intimidation, or threats of coercion or intimidation from the
8 other party: PROVIDED, That recommendation, endorsement, exposition,
9 persuasion, urging, or argument are not deemed to constitute a lack of
10 good faith.

11 (c) Encourage, aid, abet, or teach a vehicle dealer to sell
12 vehicles through any false, deceptive, or misleading sales or financing
13 practices including but not limited to those practices declared
14 unlawful in this section;

15 (d) Coerce or attempt to coerce a vehicle dealer to engage in any
16 practice forbidden in this section by either threats of actual
17 cancellation or failure to renew the dealer's franchise agreement;

18 (e) Refuse to deliver any vehicle publicly advertised for immediate
19 delivery to any duly licensed vehicle dealer having a franchise or
20 contractual agreement for the retail sale of new and unused vehicles
21 sold or distributed by such manufacturer within sixty days after such
22 dealer's order has been received in writing unless caused by inability
23 to deliver because of shortage or curtailment of material, labor,
24 transportation, or utility services, or by any labor or production
25 difficulty, or by any cause beyond the reasonable control of the
26 manufacturer;

27 (f) To provide under the terms of any warranty that a purchaser of
28 any new or unused vehicle that has been sold, distributed for sale, or
29 transferred into this state for resale by the vehicle manufacturer may

1 only make any warranty claim on any item included as an integral part
2 of the vehicle against the manufacturer of that item.

3 Nothing in this section may be construed to impair the obligations
4 of a contract or to prevent a manufacturer, distributor,
5 representative, or any other person, whether or not licensed under this
6 chapter, from requiring performance of a written contract entered into
7 with any licensee hereunder, nor does the requirement of such
8 performance constitute a violation of any of the provisions of this
9 section if any such contract or the terms thereof requiring
10 performance, have been freely entered into and executed between the
11 contracting parties. This paragraph and subsection (11)(b) of this
12 section do not apply to new motor vehicle manufacturers governed by
13 chapter 46.96 RCW.

14 (12) Unlawful transfer of an ownership interest in a motor vehicle
15 as defined in RCW 19.116.050.