
HOUSE BILL 2949

State of Washington

52nd Legislature

1992 Regular Session

By Representative Cooper

Read first time 02/05/92. Referred to Committee on Housing.

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

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

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

12 NEW SECTION. **Sec. 2.** The manufactured housing transaction

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

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

19 (1) A manufacturer shall pay the sum of three thousand dollars for
20 each separate manufacturing facility in the state;

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

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

25 The fee shall be collected by the licensing or certifying agency,
26 or its agents, at the time the manufacturer, dealer, or installer
27 submits an application for certification or licensure. This fee shall
28 not be collected more than once. The department of licensing, the
29 department of labor and industries, and the department of community

1 development shall consult with each other before adopting rules
2 necessary to implement this section. The fee shall be forwarded to the
3 state treasurer for deposit into the manufactured housing transaction
4 recovery fund.

5 NEW SECTION. **Sec. 4.** A fee of ten dollars is imposed on every
6 transfer of title issued pursuant to chapter 46.12 RCW on new or used
7 manufactured homes where ownership of the manufactured home is changed,
8 and on each application for the elimination of title under chapter
9 65.20 RCW. A transfer of title does not include the addition or
10 deletion of a spouse co-owner or a secured interest. The department of
11 licensing or its agents shall collect the fee when processing the
12 application for transfer or elimination of title. The fee collected
13 under this section shall be forwarded to the state treasurer. The
14 state treasurer shall deposit each fee collected in the manufactured
15 housing transaction recovery fund established in section 2 of this act.
16 The department of licensing and the state treasurer may enact any rules
17 necessary to carry out this section.

18 Whenever the balance of the manufactured housing transaction
19 recovery fund exceeds two hundred fifty thousand dollars on January 1
20 of any year, the department of community development may reduce or
21 eliminate the fee imposed by this section. The department of community
22 development may reimpose the fee established under this section
23 whenever the balance of the fund falls below two hundred fifty thousand
24 dollars.

25 NEW SECTION. **Sec. 5.** A buyer of a manufactured home who
26 wishes to recover damages from the manufactured housing transaction
27 recovery fund must file an application with the department of community
28 development. The department shall review the application and determine

1 the buyer's eligibility for recovery in accordance with section 6 of
2 this act. Any decision of the department concerning eligibility may be
3 appealed as an adjudicative proceeding under the administrative
4 procedure act, chapter 34.05 RCW.

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

8 (a) The buyer obtains a final judgment in any court of competent
9 jurisdiction against a manufactured home manufacturer, dealer, or
10 installer;

11 (b) The judgment is on the grounds of failure to honor a warranty
12 or guarantee, or for fraud, or for willful misrepresentation of the
13 kind or quality of the product sold or the work provided, or for
14 conversion, arising directly out of any transaction that occurs after
15 July 1, 1992;

16 (c) The buyer has presented evidence that the judgment has been
17 executed against all the assets of the judgment debtor or presented
18 satisfactory evidence that the judgment debtor is judgment proof;

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

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

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

24 (2) The amount of damages awarded from the fund is limited to the
25 actual cost of repairs to the manufactured home. No punitive damages,
26 court costs, or attorneys' fees may be awarded from the fund. The
27 maximum award that a buyer may receive from the fund against one
28 judgment debtor is twenty-five thousand dollars.

1 (3) The aggregate of claims against the fund for violations by any
2 one manufacturer, dealer, or installer is limited to seventy-five
3 thousand dollars per manufacturer, thirty-five thousand dollars per
4 dealer, and thirty-five thousand dollars per installer, during any
5 license period.

6 (4) If the aggregate of claims against the fund exceeds the balance
7 in the fund, then the money in the fund shall be prorated by the
8 department of community development among the claimants and paid in
9 proportion to the amounts of their awards remaining unpaid.

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

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

16 NEW SECTION. **Sec. 8.** If a claim is paid from the fund, the
17 department that licensed or certified the judgment debtor shall suspend
18 the judgment debtor's license or certification until the judgment
19 debtor has repaid the fund the amounts paid on its behalf, plus
20 interest. The department of community development, the department of
21 licensing, and the department of labor and industries shall consult
22 with each other before adopting rules necessary to implement this
23 section.

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

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

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

5 (1) In addition to the requirements contained in RCW 46.70.135,
6 each sale of a new manufactured home in this state is made with an
7 implied warranty that the manufactured home conforms in all material
8 aspects to applicable federal and state laws and regulations
9 establishing standards of safety or quality, and with implied
10 warranties of merchantability and fitness for a particular purpose as
11 permanent housing in the climate of the state.

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

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

18 Any person who installs a manufactured home warrants that the
19 manufactured home is installed in accordance with the state
20 installation code, chapter 296-150B WAC. The warranty contained in
21 this section may not be waived, limited, or modified. Any provision
22 attempting to waive, limit, or modify the warranty contained in this
23 section is void and unenforceable.

24 **Sec. 13.** RCW 46.70.135 and 1989 c 343 s 22 are each amended to
25 read as follows:

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

4 (1) No new manufactured home may be sold unless the purchaser is
5 provided with a manufacturer's written warranty for construction of the
6 home in compliance with the Magnuson-Moss Warranty Act (88 Stat. 2183;
7 15 U.S.C. Sec. 47 et seq.; 15 U.S.C. Sec. 2301 et seq.).

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

11 (3) The warranties required by subsections (1) and (2) of this
12 section shall be valid for a minimum of one year measured from the date
13 of ((~~sale~~)) delivery and shall not be invalidated by resale by the
14 original purchaser to a subsequent purchaser or by the certificate of
15 ownership being eliminated or not issued as described in chapter 65.20
16 RCW. Copies of the warranties shall be given to the purchaser upon
17 signing a purchase agreement and shall include an explanation of
18 remedies available to the purchaser under state and federal law for
19 breach of warranty, the name and address of the federal department of
20 housing and urban development and the state departments of licensing
21 and labor and industries, and a brief description of the duties of
22 these agencies concerning mobile homes.

23 (4) Warranty service shall be completed within forty-five days
24 after the owner gives written notice of the defect unless there is a
25 bona fide dispute between the parties. Warranty service for a defect
26 affecting health or safety shall be completed within seventy-two hours
27 of receipt of written notice. Warranty service shall be performed on
28 site and a written work order describing labor performed and parts used
29 shall be completed and signed by the service agent and the owner. If
30 the owner's signature cannot be obtained, the reasons shall be

1 described on the work order. Work orders shall be retained by the
2 dealer or manufacturer for a period of three years.

3 (5) Before delivery of possession of the home to the purchaser, an
4 inspection shall be performed by the dealer or his or her agent and by
5 the purchaser or his or her agent which shall include a test of all
6 systems of the home to insure proper operation. At the time of the
7 inspection, the purchaser shall be given copies of all documents
8 required by state or federal agencies to be supplied by the
9 manufacturer with the home which have not previously been provided as
10 required under subsection (3) of this section, and the dealer shall
11 complete any required purchaser information card and forward the card
12 to the manufacturer. A purchaser is deemed to have taken delivery of
13 the home when the inspection and systems test of the home have been
14 completed.

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

19 **Sec. 14.** RCW 46.70.180 and 1990 c 44 s 14 are each amended to read
20 as follows:

21 Each of the following acts or practices is unlawful:

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

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

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

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

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

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

14 (2) To incorporate within the terms of any purchase and sale
15 agreement any statement or representation with regard to the sale or
16 financing of a vehicle which is false, deceptive, or misleading,
17 including but not limited to terms that include as an added cost to the
18 selling price of a vehicle an amount for licensing or transfer of title
19 of that vehicle which is not actually due to the state, unless such
20 amount has in fact been paid by the dealer prior to such sale.

21 (3) To set up, promote, or aid in the promotion of a plan by which
22 vehicles are to be sold to a person for a consideration and upon
23 further consideration that the purchaser agrees to secure one or more
24 persons to participate in the plan by respectively making a similar
25 purchase and in turn agreeing to secure one or more persons likewise to
26 join in said plan, each purchaser being given the right to secure
27 money, credits, goods, or something of value, depending upon the number
28 of persons joining the plan.

29 (4) To commit, allow, or ratify any act of "bushing" which is
30 defined as follows: Taking from a prospective buyer of a vehicle a

1 written order or offer to purchase, or a contract document signed by
2 the buyer, which:

3 (a) Is subject to the dealer's, or his or her authorized
4 representative's future acceptance, and the dealer fails or refuses
5 within forty-eight hours, exclusive of Saturday, Sunday, or legal
6 holiday, and prior to any further negotiations with said buyer, to
7 deliver to the buyer either the dealer's signed acceptance or all
8 copies of the order, offer, or contract document together with any
9 initial payment or security made or given by the buyer, including but
10 not limited to money, check, promissory note, vehicle keys, a trade-in,
11 or certificate of title to a trade-in; or

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

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

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

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

29 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or
30 46.37.425.

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

5 (9) For a dealer, salesman, or mobile home manufacturer, having
6 taken an instrument or cash "on deposit" from a purchaser prior to the
7 delivery of the bargained-for vehicle, to commingle ((said)) the "on
8 deposit" funds with assets of the dealer, salesman, or mobile home
9 manufacturer instead of holding ((said)) the "on deposit" funds as
10 trustee in a separate trust account until the purchaser has taken
11 delivery of the bargained-for vehicle. Delivery of a manufactured home
12 shall be deemed to occur when the inspection and systems test of the
13 home is completed in accordance with RCW 46.70.135(5). Failure,
14 immediately upon receipt, to endorse "on deposit" instruments to such
15 a trust account, or to set aside "on deposit" cash for deposit in such
16 trust account, and failure to deposit such instruments or cash in such
17 trust account by the close of banking hours on the day following
18 receipt thereof, shall be evidence of intent to commit this unlawful
19 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a
20 separate trust account which equals his or her customary total customer
21 deposits for vehicles for future delivery. For purposes of this
22 section, "on deposit" funds received from a purchaser of a manufactured
23 home means those funds that a seller requires a purchaser to advance
24 before ordering the manufactured home, but does not include any loan
25 proceeds or moneys that might have been paid on an installment
26 contract.

27 (10) For a dealer or manufacturer to fail to comply with the
28 obligations of any written warranty or guarantee given by the dealer or
29 manufacturer requiring the furnishing of goods and services or repairs
30 within a reasonable period of time, or to fail to furnish to a

1 purchaser, all parts which attach to the manufactured unit including
2 but not limited to the undercarriage, and all items specified in the
3 terms of a sales agreement signed by the seller and buyer.

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

6 (a) Coerce or attempt to coerce any vehicle dealer to order or
7 accept delivery of any vehicle or vehicles, parts or accessories, or
8 any other commodities which have not been voluntarily ordered by the
9 vehicle dealer: PROVIDED, That recommendation, endorsement,
10 exposition, persuasion, urging, or argument are not deemed to
11 constitute coercion;

12 (b) Cancel or fail to renew the franchise or selling agreement of
13 any vehicle dealer doing business in this state without fairly
14 compensating the dealer at a fair going business value for his or her
15 capital investment which shall include but not be limited to tools,
16 equipment, and parts inventory possessed by the dealer on the day he or
17 she is notified of such cancellation or termination and which are still
18 within the dealer's possession on the day the cancellation or
19 termination is effective, if: (i) The capital investment has been
20 entered into with reasonable and prudent business judgment for the
21 purpose of fulfilling the franchise; and (ii) (~~said~~) the cancellation
22 or nonrenewal was not done in good faith. Good faith is defined as the
23 duty of each party to any franchise to act in a fair and equitable
24 manner towards each other, so as to guarantee one party freedom from
25 coercion, intimidation, or threats of coercion or intimidation from the
26 other party: PROVIDED, That recommendation, endorsement, exposition,
27 persuasion, urging, or argument are not deemed to constitute a lack of
28 good faith.

29 (c) Encourage, aid, abet, or teach a vehicle dealer to sell
30 vehicles through any false, deceptive, or misleading sales or financing

1 practices including but not limited to those practices declared
2 unlawful in this section;

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

6 (e) Refuse to deliver any vehicle publicly advertised for immediate
7 delivery to any duly licensed vehicle dealer having a franchise or
8 contractual agreement for the retail sale of new and unused vehicles
9 sold or distributed by such manufacturer within sixty days after such
10 dealer's order has been received in writing unless caused by inability
11 to deliver because of shortage or curtailment of material, labor,
12 transportation, or utility services, or by any labor or production
13 difficulty, or by any cause beyond the reasonable control of the
14 manufacturer;

15 (f) To provide under the terms of any warranty that a purchaser of
16 any new or unused vehicle that has been sold, distributed for sale, or
17 transferred into this state for resale by the vehicle manufacturer may
18 only make any warranty claim on any item included as an integral part
19 of the vehicle against the manufacturer of that item.

20 Nothing in this section may be construed to impair the obligations
21 of a contract or to prevent a manufacturer, distributor,
22 representative, or any other person, whether or not licensed under this
23 chapter, from requiring performance of a written contract entered into
24 with any licensee hereunder, nor does the requirement of such
25 performance constitute a violation of any of the provisions of this
26 section if any such contract or the terms thereof requiring
27 performance, have been freely entered into and executed between the
28 contracting parties. This paragraph and subsection (11)(b) of this
29 section do not apply to new motor vehicle manufacturers governed by
30 chapter 46.96 RCW.

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