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SESSION 2003

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HOUSE BILL 1006
Committee Substitute Favorable 6/2/03
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Short Title: Manufactured Housing.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO GRANT GREATER CONSUMER PROTECTION TO RESIDENTS OF
3 MANUFACTURED HOUSING IN NORTH CAROLINA, TO CLARIFY THE
4 SALES TAX ON MODULAR HOMES, AND TO ESTABLISH MINIMUM
5 CONSTRUCTION AND DESIGN STANDARDS FOR SINGLE-FAMILY
6 MODULAR HOMES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 20-109.2 reads as rewritten:

9 "**§ 20-109.2. Surrender of title to manufactured home.**

10 (a) Surrender of Title. – If a title has been issued for a manufactured home and
11 the manufactured home qualifies as real property as defined in G.S. 105-273(13), the
12 owner shall submit an affidavit to the Division that the manufactured home meets this
13 definition and surrender the certificate of title to the Division.

14 (b) Affidavit. – The affidavit must be in a form approved by the Commissioner
15 and shall include or provide for all of the following information:

16 (1) The manufacturer and, if applicable, the model name of the
17 manufactured home.

18 (2) The vehicle identification number and serial number of the
19 manufactured home.

20 (3) The legal description of the real property on which the manufactured
21 home is placed, stating that the owner of the manufactured home also
22 owns the real ~~property~~ property or that the owner of the manufactured
23 home has entered into a lease with a primary term of at least 20 years
24 for the real property on which the manufactured home is affixed with a
25 copy of the lease or a memorandum thereof pursuant to G.S. 47-18
26 attached to the affidavit, if not previously recorded.

27 (4) A description of any security interests in the manufactured home.

1 (5) A section for the Division's notation or statement that the title has been
2 surrendered and cancelled by the Division.

3 (c) Cancellation. – Upon compliance by the owner with the procedure for
4 surrender of title, the Division shall rescind and cancel the certificate of title. If a
5 security interest has been recorded on the certificate of ~~title~~title and not released by the
6 secured party, the Division may not cancel the title without written consent from all
7 secured parties. After canceling the title, the Division shall return the original of the
8 affidavit to the owner, or to the secured party having the first recorded security interest,
9 with the Division's notation or statement that the title has been surrendered and has been
10 cancelled by the Division. The owner or secured party shall file the affidavit returned by
11 the Division with the office of the register of deeds of the county where the real
12 property is located. The Division may charge five dollars (\$5.00) for a cancellation of a
13 title under this section.

14 (d) Application for Title After Cancellation. – If the owner of a manufactured
15 home whose certificate of title has been cancelled under this section subsequently seeks
16 to separate the manufactured home from the real property, the owner may apply for a
17 new certificate of title. The owner must submit to the Division an affidavit containing
18 the same information set out in subsection (b) of this section, verification that the
19 manufactured home has been removed from the real property, and written consent of
20 any affected owners of recorded mortgages, deeds of trust, or security interests in the
21 real property where the manufactured home was placed. The Commissioner may require
22 evidence sufficient to demonstrate that all affected owners of security interests have
23 been notified and consent. Upon receipt of this information, together with a title
24 application and required fee, the Division is authorized to issue a new title for the
25 manufactured home.

26 (e) Sanctions. – Any person who violates this section is subject to a civil penalty
27 of up to one hundred dollars (\$100.00), to be imposed in the discretion of the
28 Commissioner."

29 **SECTION 2.** G.S. 47-20.6(a) reads as rewritten:

30 "(a) If the owner of real property or the owner of the manufactured home who has
31 entered into a lease with a primary term of at least 20 years for the real property on
32 which the manufactured home is affixed has surrendered the title to a manufactured
33 home that is placed on the real property and the title has been cancelled by the Division
34 of Motor Vehicles under G.S. 20-109.2, the owner, or the secured party having the first
35 security interest in the manufactured home at time of surrender, shall record the
36 affidavit described in G.S. 20-109.2 with the office of the register of deeds of the county
37 where the real property is located. Upon recordation, the affidavit shall be indexed on
38 the grantor index in the name of the owner of the manufactured home and on the grantee
39 index in the name of the secured party or lienholder, if any."

40 **SECTION 3.** G.S. 47-20.7(a) reads as rewritten:

41 "(a) A person who owns real property on which a manufactured home has ~~been,~~
42 ~~been~~ or will be ~~placed,~~placed or the owner of a manufactured home who has entered
43 into a lease with a primary term of at least 20 years for the real property on which the
44 manufactured home has been or will be placed, as defined in G.S. 105-273(13), and

1 either where the manufactured home has never been titled by the Division of Motor
2 Vehicles or where the title to the manufactured home has been surrendered and
3 cancelled by the ~~Division~~, Division prior to January 1, 2002, may record in the office of
4 the register of deeds of the county where the real property is located a declaration of
5 intent to affix the manufactured home to the property and may convey or encumber the
6 real property, including the manufactured home, by a deed, deed of trust, or other
7 instrument recorded in the office of the register of deeds."

8 **SECTION 4.** G.S. 105-273(13) reads as rewritten:

9 **"§ 105-273. Definitions.**

10 When used in this Subchapter (unless the context requires a different meaning):

11 ...

12 (13) "Real property," "real estate," and "land" mean not only the land itself,
13 but also buildings, structures, improvements, and permanent fixtures
14 on the land, and all rights and privileges belonging or in any way
15 appertaining to the property. These terms also mean a manufactured
16 home as defined in G.S. 143-143.9(6) if it is a residential structure; has
17 the moving hitch, wheels, and axles removed; and is placed upon a
18 permanent foundation either on land owned by the owner of the
19 manufactured home. —home or on land in which the owner of the
20 manufactured home has a leasehold interest pursuant to a lease with a
21 primary term of at least 20 years for the real property on which the
22 manufactured home is affixed and where the lease expressly provides
23 for disposition of the manufactured home upon termination of the
24 lease. A manufactured home as defined in G.S. 143-143.9(6) that does
25 not meet all of these conditions is considered tangible personal
26 property."

27 **SECTION 5.** Chapter 42 of the General Statutes is amended by adding a
28 new section to read:

29 **"§ 42-14.3. Notice of conversion of manufactured home communities.**

30 (a) In the event that an owner of a manufactured home community (defined as a
31 parcel of land, whether undivided or subdivided, that has been designed to
32 accommodate at least five manufactured homes) intends to convert the manufactured
33 home community, or any part thereof, to another use that will require movement of the
34 manufactured homes, the owner of the manufactured home community shall give each
35 owner of a manufactured home notice of the intended conversion at least 180 days
36 before the owner of a manufactured home is required to vacate and move the
37 manufactured home, regardless of the term of the tenancy. Failure to give notice as
38 required by this section is a defense in an action for possession. The respective rights
39 and obligations of the community owner and the owner of the manufactured home
40 under their lease shall continue in effect during the notice period.

41 (b) Notwithstanding subsection (a) of this section, if a manufactured home
42 community is being closed pursuant to a valid order of any unit of State or local
43 government, the owner of the community shall be required to give notice of the closure

1 of the community to each resident of the community within three business days of the
2 date on which the order is issued."

3 **SECTION 6.** Chapter 143 of the General Statutes is amended by adding a
4 new section to read:

5 **"§ 143-143.20A. Display of pricing on manufactured homes.**

6 (a) If the manufacturer of a manufactured home publishes a manufacturer's
7 suggested retail price, that price shall be displayed near the front entrance of the
8 manufactured home.

9 (b) Each manufactured home dealer shall prominently display a sign and provide
10 to each buyer a notice, developed by the North Carolina Manufactured Housing Board,
11 containing information about the Board, including how to file a consumer complaint
12 with the Board and the warranties and protections provided for each new manufactured
13 home under federal and State law."

14 **SECTION 7.** G.S. 143-143.21A reads as rewritten:

15 **"§ 143-143.21A. Purchase agreements; buyer cancellations.**

16 (a) A purchase agreement for a manufactured home shall include all of the
17 following:

- 18 (1) A description of the manufactured home and all accessories included
19 in the purchase.
- 20 (2) The purchase price for the home and all accessories.
- 21 (3) The amount of deposit or other payment toward or payment of the
22 purchase price of the manufactured home and accessories that is made
23 by the buyer.
- 24 (4) The date the retail purchase agreement is signed.
- 25 (5) The estimated terms of financing the purchase, if any, including the
26 estimated interest rate, number of years financed, and monthly
27 payment.
- 28 (6) The buyer's signature.
- 29 (7) The dealer's signature.

30 (b) The purchase agreement shall contain, in immediate proximity to the space
31 reserved for the signature of the buyer and in at least ten point, all upper-case Gothic
32 type, the following statement:

33 "I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE
34 BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT
35 I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS
36 CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE
37 AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY
38 NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY
39 THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS
40 OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS
41 AGREEMENT."

42 (c) At the time the deposit or other payment toward or payment for the purchase
43 price is received by the dealer, the dealer shall give the buyer a copy of the purchase
44 agreement and a completed form in duplicate, captioned "Notice of Cancellation,"

1 which shall be attached to the purchase agreement, be easily detachable, and explain the
2 buyer's right to cancel the purchase and how that right can be exercised.

3 (d) The dealer shall return the deposit or other payment toward or payment for
4 the purchase price to the buyer if the buyer cancels the purchase before midnight of the
5 third business day after the date the buyer signed the purchase ~~agreement~~agreement or
6 if any of the material terms of the purchase agreement are changed by the dealer. To
7 make the cancellation effective, the buyer shall give the dealer written notice of the
8 buyer's cancellation of the purchase. The dealer shall return the deposit or other
9 payment toward or payment for the purchase price to the buyer within 15 business days
10 after receipt of the notice of ~~cancellation~~cancellation or within three business days of
11 any change by the dealer of the purchase agreement. For purposes of this section,
12 "business day" means any day except Sunday and legal holidays. Each time the dealer
13 gives the buyer a new set of financing terms, unless the financing terms are more
14 favorable to the buyer, the buyer shall be given another three-day cancellation period.
15 The dealer shall not commence setup procedures until after the final three-day
16 cancellation period has expired.

17 (e) If the buyer cancels the purchase after the three-day cancellation period, but
18 before the sale is completed, and if:

- 19 (1) The manufactured home is in the dealer's inventory, the dealer may
20 retain from the deposit or other payment received from the buyer
21 actual damages up to a maximum of ten percent (10%) of the purchase
22 price; or
23 (2) The manufactured home is specially ordered from the manufacturer for
24 the buyer, the dealer may retain actual damages up to the full amount
25 of the buyer's deposit or other payment received from the buyer.

26 (f) The Board shall adopt rules concerning the terms of any deposit paid by a
27 buyer to a dealer. The rules may exempt deposits of less than two thousand dollars
28 (\$2,000). To the extent practicable, the rules shall protect the deposits from the claims
29 of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further
30 provide for the prompt return of a buyer's deposit if the buyer is entitled to its return."

31 **SECTION 8.** Chapter 143 of the General Statutes is amended by adding a
32 new section to read:

33 **§ 143-143.10A. Criminal history checks of applicants for licensure.**

34 (a) Definitions. – The following definitions shall apply in this section:

- 35 (1) Applicant. – A person applying for licensure as a manufactured home
36 manufacturer, dealer, salesperson, or set-up contractor.
37 (2) Criminal history. – A history of conviction of a state or federal crime,
38 whether a misdemeanor or felony, that bears on an applicant's fitness
39 for licensure under this Article. The crimes include the criminal
40 offenses set forth in any of the following Articles of Chapter 14 of the
41 General Statutes: Article 5, Counterfeiting and Issuing Monetary
42 Substitutes; Article 5A, Endangering Executive and Legislative
43 Officers; Article 6, Homicide; Article 7A, Rape and Other Sex
44 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction;

1 Article 13, Malicious Injury or Damage by Use of Explosive or
2 Incendiary Device or Material; Article 14, Burglary and Other
3 Housebreakings; Article 15, Arson and Other Burnings; Article 16,
4 Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19,
5 False Pretenses and Cheats; Article 19A, Obtaining Property or
6 Services by False or Fraudulent Use of Credit Device or Other Means;
7 Article 19B, Financial Transaction Card Crime Act; Article 20,
8 Frauds; Article 21, Forgery; Article 26, Offenses Against Public
9 Morality and Decency; Article 26A, Adult Establishments; Article 27,
10 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
11 Misconduct in Public Office; Article 35, Offenses Against the Public
12 Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection
13 of Minors; Article 40, Protection of the Family; Article 59, Public
14 Intoxication; and Article 60, Computer-Related Crime. The crimes
15 also include possession or sale of drugs in violation of the North
16 Carolina Controlled Substances Act in Article 5 of Chapter 90 of the
17 General Statutes and alcohol-related offenses including sale to
18 underage persons in violation of G.S. 18B-302 or driving while
19 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In
20 addition to the North Carolina crimes listed in this subdivision, such
21 crimes also include similar crimes under federal law or under the laws
22 of other states.

23 (b) All applicants for licensure shall consent to a criminal history record check.
24 Refusal to consent to a criminal history record check may constitute grounds for the
25 Board to deny licensure to an applicant. The Board shall ensure that the State and
26 national criminal history of an applicant is checked. The Board shall be responsible for
27 providing to the North Carolina Department of Justice the fingerprints of the applicant
28 to be checked, a form signed by the applicant consenting to the criminal record check
29 and the use of fingerprints and other identifying information required by the State or
30 National Repositories of Criminal Histories, and any additional information required by
31 the Department of Justice. The Board shall keep all information obtained pursuant to
32 this section confidential.

33 (c) If an applicant's criminal history record check reveals one or more
34 convictions listed under subdivision (a)(2) of this section, the conviction shall not
35 automatically bar licensure. The Board shall consider all of the following factors
36 regarding the conviction:

- 37 (1) The level of seriousness of the crime.
- 38 (2) The date of the crime.
- 39 (3) The age of the person at the time of the conviction.
- 40 (4) The circumstances surrounding the commission of the crime, if known.
- 41 (5) The nexus between the criminal conduct of the person and the job
42 duties of the position to be filled.
- 43 (6) The person's prison, jail, probation, parole, rehabilitation, and
44 employment records since the date the crime was committed.

1 (7) The subsequent commission by the person of a crime listed in
2 subdivision (a)(2) of this section.

3 If, after reviewing these factors, the Board determines that the applicant's criminal
4 history disqualifies the applicant for licensure, the Board may deny licensure of the
5 applicant. The Board may disclose to the applicant information contained in the
6 criminal history record check that is relevant to the denial. The Board shall not provide
7 a copy of the criminal history record check to the applicant. The applicant shall have the
8 right to appear before the Board to appeal the Board's decision. However, an appearance
9 before the full Board shall constitute an exhaustion of administrative remedies in
10 accordance with Chapter 150B of the General Statutes.

11 (d) Limited Immunity. – The Board, its officers, and employees, acting in good
12 faith and in compliance with this section, shall be immune from civil liability for
13 denying licensure to an applicant based on information provided in the applicant's
14 criminal history record check."

15 **SECTION 9.** G.S. 143-143.10(b) is amended by adding a new subdivision to
16 read:

17 (b) In accordance with the provisions of this Article, the Board shall have the
18 following powers and duties:

19 ...

20 (6) To request that the Department of Justice conduct criminal history
21 checks of applicants for licensure pursuant to G.S. 114-19.13."

22 **SECTION 10.** G.S. 143-143.11(b) reads as rewritten:

23 (b) Application for the license shall be made to the Board at such time, in such
24 form, and contain information the Board requires, and shall be accompanied by the fee
25 established by the Board. The fee shall not exceed three hundred dollars (\$300.00) for
26 any license. In addition to the license fee, the Board may also charge an applicant a fee
27 to cover the cost of the criminal history record check required by G.S. 143-143.10A."

28 **SECTION 11.** G.S. 143-143.13(a)(12) reads as rewritten:

29 (a) A license may be denied, suspended or revoked by the Board on any one or
30 more of the following grounds:

31 ...

32 (12) Conviction of a felony or any crime involving moral turpitude, any
33 crime listed in G.S. 143-143.10A."

34 **SECTION 12.** Article 4 of Chapter 114 of the General Statutes is amended
35 by adding a new section to read:

36 **§ 114-19.13. Criminal record checks of applicants for manufactured home**
37 **manufacturer, dealer, salesperson, or set-up contractor licensure.**

38 The Department of Justice may provide to the North Carolina Manufactured
39 Housing Board from the State and National Repositories of Criminal Histories the
40 criminal history of any applicant for licensure as a manufactured home manufacturer,
41 dealer, salesperson, or set-up contractor under Article 9A of Chapter 143 of the General
42 Statutes. Along with the request, the Board shall provide to the Department of Justice
43 the fingerprints of the applicant, a form signed by the applicant consenting to the
44 criminal record check, and use of fingerprints and other identifying information required

1 by the State and National Repositories, and any additional information required by the
2 Department of Justice. The applicant's fingerprints shall be forwarded to the State
3 Bureau of Investigation for a search of the State's criminal history record file, and the
4 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
5 Investigation for a national criminal history record check. The Board shall keep all
6 information obtained pursuant to this section confidential. The Department of Justice
7 may charge a fee to offset the cost incurred by it to conduct a criminal record check
8 under this section. The fee shall not exceed the actual cost of locating, editing,
9 researching, and retrieving the information."

10 **SECTION 13.** G.S. 105-164.3(20) reads as rewritten:

11 "(20) Manufactured home. – A structure that is designed to be used as a
12 dwelling and is manufactured in accordance with the specifications for
13 manufactured homes issued by the United States Department of
14 Housing and Urban Development.~~that meets one of the following~~
15 ~~conditions:~~

16 a. ~~Is manufactured in accordance with the specifications for~~
17 ~~manufactured homes issued by the United States Department of~~
18 ~~Housing and Urban Development.~~

19 b. ~~Is manufactured in accordance with the specifications for~~
20 ~~modular homes under the North Carolina State Residential~~
21 ~~Building Code, is built on a permanent chassis, and is~~
22 ~~transportable in one or more sections."~~

23 **SECTION 14.** G.S. 105-164.3 is amended by adding two new subdivisions

24 to read:

25 "(21a) Modular home. – A factory-built structure that is designed to be used
26 as a dwelling, is manufactured in accordance with the specifications
27 for modular homes under the North Carolina State Residential
28 Building Code, and bears a seal or label issued by the Department of
29 Insurance pursuant to G.S. 143-139.1.

30 (21b) Modular homebuilder. – A person who furnishes for consideration a
31 modular home to a purchaser that will occupy the modular home. The
32 purchaser can be a person that will lease or rent the unit as real
33 property."

34 **SECTION 15.** G.S. 105-164.4(a) is amended by adding a new subdivision to

35 read:

36 "(8) The rate of two and one-half percent (2.5%) applies to the sales price
37 of each modular home sold, including all accessories attached to the
38 modular home when it is delivered to the purchaser. For the purposes
39 of this subdivision, the retail sale is deemed to be the sale of a modular
40 home to a modular homebuilder."

41 **SECTION 16.** Part 8 of Article 5 of Chapter 105 of the General Statutes is
42 amended by adding a new section to read:

43 **§ 105-164.44G. Distribution of part of tax on modular homes.**

1 The Secretary must distribute to counties twenty percent (20%) of the taxes collected
2 under G.S. 105-164.4(a)(8) on modular homes. The Secretary must make the
3 distribution on a monthly basis in accordance with the distribution formula in G.S.
4 105-520 by including the taxes on modular homes with local tax revenue that is not
5 attributable to a particular county."

6 **SECTION 17.** G.S. 143-139.1 reads as rewritten:

7 **"§ 143-139.1. Certification of manufactured buildings, structures or components**
8 **by recognized independent testing laboratory. ~~laboratory; minimum~~**
9 **standards for modular homes.**

10 (a) Certification. – The State Building Code may provide, in circumstances
11 deemed appropriate by the Building Code Council, for testing, evaluation, inspection,
12 and certification of buildings, structures or components manufactured off the site on
13 which they are to be erected, by a recognized independent testing laboratory having
14 follow-up inspection services approved by the Building Code Council. Approval of such
15 buildings, structures or components shall be evidenced by labels or seals acceptable to
16 the Council. All building units, structures or components bearing such labels or seals
17 shall be deemed to meet the requirements of the State Building Code and this Article
18 without further inspection or payment of fees, except as may be required for the
19 enforcement of the Code relative to the connection of units and components and
20 enforcement of local ordinances governing zoning, utility connections, and foundations
21 permits. The Building Code Council shall adopt and may amend from time to time such
22 reasonable and appropriate rules and regulations as it deems necessary for approval of
23 agencies offering such testing, evaluation, inspection, and certification services and for
24 overseeing their operations. Such rules and regulations shall include provisions to insure
25 that such agencies are independent and free of any potential conflicts of interest which
26 might influence their judgment in exercising their functions under the Code. Such rules
27 and regulations may include a schedule of reasonable fees to cover administrative
28 expenses in approving and overseeing operations of such agencies and may require the
29 posting of a bond or other security satisfactory to the Council guaranteeing faithful
30 performance of duties under the Code.

31 The Building Code Council may also adopt rules to insure that any person that is not
32 licensed, in accordance with G.S. 87 1, and that undertakes to erect a North Carolina
33 labeled manufactured modular building, meets the manufacturer's installation
34 instructions and applicable provisions of the State Building Code. Any such person,
35 before securing a permit to erect a modular building, shall provide the code enforcement
36 official proof that he has in force for each modular building to be erected a \$5,000
37 surety bond insuring compliance with the regulations of the State Building Code
38 governing installation of modular buildings.

39 (b) Minimum Standards for Modular Homes. – To qualify for a label or seal
40 under subsection (a) of this section, a single-family modular home must meet or exceed
41 the following construction and design standards:

42 (1) Roof pitch. – For homes with a single predominant roofline, the pitch
43 of the roof shall be no less than five feet rise for every 12 feet of run.

- 1 (2) Eave projection. – The eave projections of the roof shall be no less
2 than 10 inches, which may not include a gutter around the perimeter of
3 the home, unless the roof pitch is 8/12 or greater.
- 4 (3) Exterior wall. – The minimum height of the exterior wall shall be at
5 least seven feet six inches for the first story.
- 6 (4) Siding and roofing materials. – The materials and texture for the
7 exterior materials shall be compatible in composition, appearance, and
8 durability to the exterior materials commonly used in standard
9 residential construction.
- 10 (5) Foundations. – The home shall be designed to require foundation
11 supports around the perimeter. The supports may be in the form of
12 piers, pier and curtain wall, piling foundations, a perimeter wall, or
13 other approved perimeter supports."

14 **SECTION 18.** If any provision of this act or its application is held invalid,
15 the invalidity does not affect other provisions or applications of this act that can be
16 given effect without the invalid provisions or application, and to this end the provisions
17 of this act are severable.

18 **SECTION 19.** Sections 5 through 7 of this act become effective October 1,
19 2003. Sections 8 through 17 of this act become effective January 1, 2004, and Sections
20 13 through 16 of this act apply to sales of modular homes on and after that date. The
21 remainder of this act is effective when it becomes law.