

SENATE BILL NO. 629

June 26, 1997, Introduced by Senator SHUGARS and referred to the Committee on Local, Urban and State Affairs.

A bill to establish a manufactured housing recovery fund in this state; to prescribe the powers and duties of certain persons and governmental agencies; to prescribe certain fees; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "manufactured housing recovery fund act".

3 Sec. 2. As used in this act:

4 (a) "Commission" means the mobile home commission created
5 under the mobile home commission act.

6 (b) "Department" means the department of consumer and indus-
7 try services.

8 (c) "Manufactured home" means a structure that is
9 transportable in 1 or more sections and that is built on a
10 chassis and designed to be used as a dwelling with or without

1 permanent foundation if connected to the required utilities, and
2 includes the plumbing, heating, air-conditioning, and electrical
3 systems contained in the structure. In the case of a manufac-
4 tured home manufactured after June 15, 1976, "manufactured home"
5 means a structure constructed pursuant to the national manufac-
6 tured housing construction and safety standards act of 1974,
7 title VI of the housing and community development act of 1974,
8 Public Law 93-383, 42 U.S.C. 5401 to 5426.

9 (d) "Manufactured home installer and servicer" means a
10 person, including a manufactured home retailer, who for compensa-
11 tion installs or repairs manufactured homes.

12 (e) "Manufactured home retailer" means a person other than a
13 manufacturer engaged in the business of buying manufactured homes
14 for resale, exchange, lease, or rent or offering manufactured
15 homes for sale, lease, rent, or exchange to customers.

16 (f) "Manufactured home manufacturer" means a person engaged
17 in manufacturing or assembling manufactured homes or a person
18 engaged in importing manufactured homes into the United States
19 for resale.

20 (g) "Manufactured housing recovery fund" or "recovery fund"
21 means the manufactured housing recovery fund created in section
22 3.

23 (h) "Mobile home commission act" means 1987 PA 96, MCL
24 125.2301 to 125.2349.

25 Sec. 3. The manufactured housing recovery fund is created
26 in the department of treasury. The manufactured housing recovery
27 fund shall be administered by the department of consumer and

1 industry services as provided in this act. Costs of
2 administration shall be paid out of the manufactured housing
3 recovery fund. Costs of administration shall not exceed 10% of
4 the manufactured housing recovery fund. All money remaining in
5 the manufactured housing recovery fund at the end of a fiscal
6 year, including interest earned by the manufactured housing
7 recovery fund, shall be carried over in the manufactured housing
8 recovery fund to the next and succeeding fiscal years and shall
9 not lapse to the general fund.

10 Sec. 4. (1) A purchaser who obtains a final judgment in a
11 court of record against a manufactured home manufacturer or
12 against a manufactured home installer and servicer or retailer
13 licensed under the mobile home commission act for a failure to
14 honor warranties or contractual obligations, or for fraud, will-
15 ful misrepresentation, or a violation of the mobile home commis-
16 sion act or rules promulgated under that act, may apply to the
17 court in which the judgment was entered for an order directing
18 payment from the manufactured housing recovery fund created in
19 section 3 in accordance with section 5 if the purchaser meets all
20 of the requirements set forth in subsection (3).

21 (2) A manufactured home retailer or installer and servicer
22 licensed under the mobile home commission act who obtains a final
23 judgment in a court of record against a manufactured home manu-
24 facturer for a failure to honor warranties or contractual obliga-
25 tions, or for failure to pay the manufactured home retailer or
26 manufactured home installer and servicer for warranty work
27 performed for or on behalf of the manufactured home manufacturer,

1 or for fraud, willful misrepresentation, or a violation of the
2 mobile home commission act or rules promulgated under that act,
3 may apply to the court in which the judgment was entered for an
4 order directing payment from the manufactured housing recovery
5 fund in accordance with section 5 if the manufactured home
6 retailer or manufactured home installer and servicer meets all of
7 the requirements set forth in subsection (3).

8 (3) A purchaser described in subsection (1) or a manufac-
9 tured home retailer or manufactured home installer and servicer
10 described in subsection (2) is eligible for payment from the
11 recovery fund if all of the following are met:

12 (a) The manufactured home that was the subject of the law-
13 suit was purchased for personal or family residential purposes.

14 (b) The judgment was entered in a civil action based on a
15 transaction that occurred at least 6 months after the effective
16 date of this act.

17 (c) The civil action in which the judgment was entered was
18 brought within 1 year after the transaction on which the action
19 was based.

20 (d) Notice of the application made under this section was
21 given to the department by service of a copy of the application
22 filed with the court.

23 (e) The application under this section is filed after the
24 time for appeal of the judgment has expired and not more than 1
25 year after the termination of all proceedings in the civil action
26 in which the judgment was entered.

1 (f) The judgment debtor has failed to pay all or part of the
2 judgment.

3 (g) All reasonably available legal remedies, including all
4 postjudgment remedies, have been pursued and the judgment remains
5 unpaid.

6 (h) The claimant is not a spouse of the judgment debtor or a
7 person representing the spouse of the judgment debtor.

8 Sec. 5. (1) Upon receipt of an application filed under sec-
9 tion 4, verification that all of the requirements of section
10 4(3)(a) to (h) have been met, and a hearing at which the depart-
11 ment is represented, the court shall order payment from the manu-
12 factured housing recovery fund created in section 3. Except as
13 otherwise provided in subsection (3), the order shall direct the
14 department to issue a payment warrant in the amount of the actual
15 and direct loss suffered by the claimant, plus court costs and
16 reasonable attorney fees in an amount of not more than 15% of the
17 amount of the judgment that remains unpaid.

18 (2) Upon request of the department, the court may require
19 all claimants against a single manufactured home manufacturer,
20 manufactured home retailer, or manufactured home installer and
21 servicer to be joined in 1 application so that all claims may be
22 determined and settled equitably. If the recovery fund has
23 insufficient funds to pay the unpaid portion of each judgment in
24 full, or if the total amount of the combined unpaid judgments
25 exceeds the limitation prescribed by subsection (3), the court
26 may order that payment from the recovery fund be distributed
27 among the claimants in the same ratio as their respective claims

1 bear to the total amount of claims against the manufactured home
2 manufacturer, manufactured home retailer, or manufactured home
3 installer and servicer or that payments be distributed in some
4 other equitable manner.

5 (3) An order issued under this section shall be for an
6 amount of not more than \$25,000.00 for an individual claim or not
7 more than \$100,000.00 for a group of claims against a single man-
8 ufactured home manufacturer, manufactured home retailer, or manu-
9 factured home installer and servicer in a 12-month period.

10 (4) Payment of a claim as a result of an order under this
11 section shall not be made unless the requirements of section 9
12 are met.

13 Sec. 6. (1) Except as provided in subsection (2), the
14 department shall pay claims against the manufactured housing
15 recovery fund created in section 3 in the order in which the
16 department receives the orders directing payment, without regard
17 to the order in which the civil actions were commenced, judgments
18 entered, or applications filed under section 4.

19 (2) If the amount of money in the manufactured housing
20 recovery fund at a particular time is insufficient to satisfy an
21 order for payment issued under section 5, the department shall
22 distribute the available money to the claimant. If the order is
23 for combined claims, the department shall distribute the avail-
24 able money according to the terms of the order or, if the order
25 does not address the issue of distribution, on a pro rata basis.
26 If sufficient money is subsequently deposited in the manufactured
27 housing recovery fund, the department shall satisfy the unpaid

1 claims or portions of claims in the order that the orders
2 directing payment were received by the department.

3 Sec. 7. (1) A manufactured home retailer or manufactured
4 home installer and servicer who receives or renews a license
5 under the mobile home commission act before the effective date of
6 this act and upon whom service cannot be made with reasonable
7 diligence shall be considered to have appointed the department as
8 its attorney in fact upon whom service of process may be made in
9 civil actions described in section 4.

10 (2) A manufactured home retailer or manufactured home
11 installer and servicer who receives or renews a license under the
12 mobile home commission act after the effective date of this act
13 shall sign an irrevocable consent with the department appointing
14 the department as its attorney in fact upon whom service of pro-
15 cess may be made in a civil action described in section 4 if
16 service cannot be made with reasonable diligence on the manufac-
17 tured home retailer or manufactured home installer and servicer.
18 The consent shall contain the acknowledged signature of an offi-
19 cer, owner, or partner of the manufactured home retailer or manu-
20 factured home installer and servicer.

21 Sec. 8. (1) If the department pays an amount from the manu-
22 factured housing recovery fund created in section 3 under section
23 5 to satisfy a judgment against a manufactured home retailer or
24 manufactured home installer and servicer, the commission shall
25 suspend the license issued under the mobile home commission act
26 of the manufactured home retailer or manufactured home installer
27 and servicer on the effective date of the order or settlement.

1 The commission shall not reinstate the license until the
2 manufactured home retailer or manufactured home installer and
3 servicer has repaid in full the amount paid by the recovery fund
4 plus interest at the rate of 12% per annum.

5 (2) If the department pays an amount from the manufactured
6 housing recovery fund under section 5 to satisfy a judgment
7 against a manufactured home manufacturer, the manufactured home
8 manufacturer shall not sell or deliver for sale a manufactured
9 home in this state until it has repaid in full the amount paid by
10 the recovery fund plus interest at the rate of 12% per annum.

11 (3) This section does not prevent the department from taking
12 disciplinary action against a licensee or a manufactured home
13 manufacturer for a violation of the mobile home commission act or
14 rules promulgated under that act. The repayment by a licensee of
15 an obligation to the manufactured housing recovery fund does not
16 nullify or modify the effect of another disciplinary proceeding
17 brought under the mobile home commission act or rules promulgated
18 pursuant to that act.

19 Sec. 9. The manufactured housing recovery fund shall be
20 capitalized at \$2,000,000.00 and shall be funded by fees col-
21 lected under section 10. A claim shall not be paid from the man-
22 ufactured housing recovery fund created in section 3 unless the
23 fund contains at least \$500,000.00. A claim made under this act
24 shall not be paid from the general fund of the state.

25 Sec. 10. Except as otherwise provided in this section, at
26 the time the purchaser of a manufactured home that is subject to
27 the certificate of title provisions of the mobile home commission

1 act makes application to the department for the issuance of the
2 certificate of title, the department shall collect from the manu-
3 factured home retailer who is involved in the sale, in addition
4 to the fee under section 30a of the mobile home commission act,
5 MCL 125.2330a, a \$15.00 transaction fee and shall deposit that
6 fee in the manufactured housing recovery fund created in section
7 3. After the balance in the manufactured housing recovery fund
8 reaches \$2,000,000.00, the department shall cease collection of
9 the \$15.00 transaction fee. However, if the balance in the manu-
10 factured housing recovery fund drops below \$500,000.00, the
11 department again shall collect the \$15.00 transaction fee until
12 the balance in the manufactured housing recovery fund again
13 reaches \$2,000,000.00.