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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4374

(By Delegates Kuhn, Butcher and Martin)

Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

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H. B. 4374

(BY DELEGATES KUHN, BUTCHER AND MARTIN)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §21-9-4, §21-9-11 and §21-9-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-9-12a, all relating to manufactured housing construction and safety standards; removing out-dated language; providing for inspections and the payment of the costs of inspection; authorizing the issuance of cease and desist orders; and establishing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §21-9-4, §21-9-11 and §21-9-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-9-12a, all to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

1 (a) The board shall have the power to:

2 (1) Regulate its own procedure and practice;

3 (2) Propose rules for legislative approval in accordance
4 with the provisions of article three, chapter twenty-nine-a of
5 this code, to implement the provisions of this article and the
6 federal standards;

7 (3) Advise the commissioner in all matters within his
8 jurisdiction under this article;

9 (4) Prepare and submit to HUD a state plan application
10 seeking the designation of the board as a state administrative
11 agency for the purpose of administering and enforcing the
12 federal standards and take all other action necessary to enable
13 the board to serve as a state administrative agency;

14 (5) Study and report to the governor and the Legislature on
15 matters pertinent to the manufacture, distribution and sale of
16 manufactured housing in this state and recommend changes in
17 the law determined by the board to be necessary to promote
18 consumer safety and protect purchasers of manufactured
19 housing;

20 (6) Conduct hearings and presentations of views consistent
21 with its rules and the federal standards;

22 (7) Approve or disapprove applications for licenses to
23 manufacturers, dealers, distributors and contractors in accor-
24 dance with section nine of this article, and revoke or suspend
25 licenses in accordance with that section, and set the amounts of
26 license fees and bonds or other forms of assurance in accor-
27 dance with sections nine and ten of this article;

28 (8) Delegate to and authorize the commissioner to exercise
29 the powers and duties of the board that the board may deter-
30 mine, including without limitation, the authority to approve,
31 disapprove, revoke or suspend licenses in accordance with
32 section nine of this article.

33 (b) Any person adversely affected by a decision of the
34 board or the commissioner shall be afforded an opportunity for
35 hearing before the board in accordance with section one, article
36 five, chapter twenty-nine-a of this code.

§21-9-11. State may act as primary inspection agency.

1 (a) This state, acting through the board, is hereby granted
2 all powers and authority necessary to act as a primary inspec-
3 tion agency and to perform the functions of a “design approval
4 primary inspection agency” and a “production inspection
5 primary inspection agency”, as the terms are defined in the
6 federal standards. The board may apply to the secretary of HUD
7 on behalf of this state to act as the primary inspection agency,
8 including application for approval to act as the exclusive
9 production inspection primary inspection agency in this state.
10 The board may propose rules for legislative approval in
11 accordance with the provisions of article three, chapter twenty-
12 nine-a of this code necessary to enable the board to act on
13 behalf of this state as the primary inspection agency.

14 (b) The board may provide inspections to private home sites
15 to aid in the resolution of a consumer complaint filed with the
16 board by the home owner. The board may provide, free of
17 charge, one initial and one follow-up inspection related to each
18 consumer complaint: Provided, That the board may charge a
19 licensee an inspection fee for any follow-up inspections which
20 are necessitated by a licensee’s failure to comply with an order
21 of the board. The inspection fee may not exceed seventy-five
22 dollars per hour, plus expenses.

§21-9-12. Violation of article; penalties; injunction.

1 (a) Any person who violates any of the following provi-
2 sions relating to manufactured homes or any legislative rule
3 proposed by the board pursuant to the provisions of this article,
4 is liable to the state for a penalty, as determined by the board,
5 not to exceed one thousand dollars for each violation. Each
6 violation constitutes a separate violation with respect to each
7 manufactured home, except that the maximum penalty may not
8 exceed one million dollars for any related series of violations
9 occurring within one year from the date of the first violation.
10 No person may:

11 (1) Manufacture for sale, lease, sell, offer for sale or lease,
12 or introduce or deliver, or import into this state any manufac-
13 tured home which is manufactured on or after the effective date
14 of any applicable standard established by a rule promulgated by
15 the board pursuant to the provisions of this article, or any
16 applicable federal standard, which does not comply with that
17 standard.

18 (2) Fail or refuse to permit access to or copying of records,
19 or fail to make reports or provide information or fail or refuse
20 to permit entry or inspection as required by the provisions of
21 this article.

22 (3) Fail to furnish notification of any defect as required by
23 the provisions of 42 U.S.C. §5414.

24 (4) Fail to issue a certification required by the provisions of
25 42 U.S.C. §5415 or issue a certification to the effect that a
26 manufactured home conforms to all applicable federal stan-
27 dards, when the person knows or in the exercise of due care
28 would have reason to know that the certification is false or
29 misleading in a material respect.

30 (5) Fail to establish and maintain records, make reports, and
31 provide information as the board may reasonably require to
32 enable the board to determine whether there is compliance with
33 the federal standards; or fail to permit, upon request of a person
34 duly authorized by the board, the inspection of appropriate
35 books, papers, records and documents relative to determining
36 whether a manufacturer, dealer, distributor or contractor has
37 acted or is acting in compliance with the provisions of this
38 article or applicable federal standards.

39 (6) Issue a certification pursuant to the provisions of 42
40 U.S.C. §5403(a), when the person knows or in the exercise of
41 due care would have reason to know that the certification is
42 false or misleading in a material respect.

43 (b) Subdivision (1), subsection (a) of this section does not
44 apply to:

45 (1) The sale or the offer for sale of any manufactured home
46 after the first purchase of it in good faith for purposes other
47 than resale;

48 (2) Any person who establishes that he did not have reason
49 to know in the exercise of due care that the manufactured home
50 is not in conformity with applicable federal standards; or

51 (3) Any person who, prior to the first purchase, holds a
52 certificate by the manufacturer or importer of the manufactured
53 home to the effect that the manufactured home conforms to all
54 applicable federal standards, unless that person knows that the
55 manufactured home does not conform to those standards.

56 (c) Any manufacturer, dealer, distributor or contractor who
57 engages in business in this state without furnishing a bond or
58 other form of assurance as required by the provisions of this
59 article is guilty of a misdemeanor and, upon conviction thereof,

60 shall be fined not more than fifty dollars for each day the
61 violation continues.

62 (d) The board may institute proceedings in the circuit court
63 of the county in which the alleged violation occurred or are
64 occurring to enjoin any violation of the provisions of this
65 article.

66 (e) Any person or officer, director, partner or agent of a
67 corporation, partnership or other entity who willfully or
68 knowingly violates any of the provisions listed in subsection (a)
69 of this section, in any manner which threatens the health or
70 safety of any purchaser, is guilty of a misdemeanor and, upon
71 conviction thereof, shall be fined not more than one thousand
72 dollars or confined in the county or regional jail for a period of
73 not more than one year, or both fined and imprisoned.

74 (f) Nothing in this article applies to any bank or financial
75 institution engaged in the disposal of foreclosed or repossessed
76 manufactured homes.

§21-9-12a. Violation of cease and desist order; penalties.

1 (a) Upon a determination that a person is engaging in
2 business without a valid license as required under the provi-
3 sions of section nine of this article, the board or commissioner
4 may immediately issue a cease and desist order requiring the
5 person to cease all operations within this state. After a hearing,
6 the board may impose a penalty of not less than two hundred
7 dollars nor more than one thousand dollars upon any person
8 found to have been engaging in business in this state without a
9 valid license as required under the provisions of section nine of
10 this article.

11 (b) The board may institute proceedings in the circuit court
12 of the county where the violation occurred, against any person

13 violating a cease and desist order issued under the provisions of
14 subsection (a) of this section.

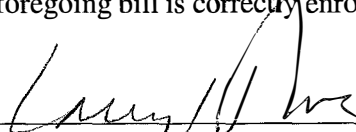
15 (c) Any person continuing to engage in business in this
16 state without a valid license as required under the provisions of
17 section nine of this article, after the issuance of a cease and
18 desist order under the provisions of subsection (a) of this
19 section, is guilty of a misdemeanor and, upon conviction
20 thereof, is subject to the following penalties:

21 (1) For a first offense, a fine of not less than two hundred
22 dollars nor more than one thousand dollars;

23 (2) For a second offense, a fine of not less than five
24 hundred dollars nor more than five thousand dollars, or confine-
25 ment in a county or regional jail for not less than thirty days nor
26 more than six months or both a fine and confinement; and

27 (3) For a third or subsequent offense, a fine of not less than
28 one thousand dollars nor more than five thousand dollars, and
29 confinement in the country or regional jail for not less than
30 thirty days nor more than one year.

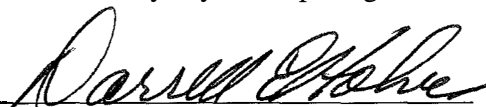
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

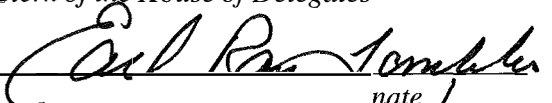

Chairman House Committee

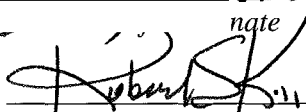
Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


Clerk of the House of Delegates


Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.


Governor

PRESENTED TO THE

GOVERNOR

DATE

3/31/04

TIME

10:15 AM