

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2371

BY DELEGATES PUSHKIN, FLUHARTY AND SPONAUGLE

[Introduced February 13, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
 2 designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6,
 3 §46A-6N-7, §46A-6N-8, §46A-6N-9 and §46A-6N-10, all relating to placing upon the
 4 manufacturers of manufactured homes the duty to meet their obligations and
 5 responsibilities under the terms of the express warranties extended to the consumers in
 6 this state; and providing consumers additional remedies to enforce the warranties.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6,
 3 §46A-6N-7, §46A-6N-8, §46A-6N-9 and §46A-6N-10, all to read as follows:

**ARTICLE 6N. CONSUMER PROTECTION--NEW MANUFACTURED HOME
 WARRANTIES.**

§46A-6N-1. Legislative declarations.

1 (1) The Legislature hereby finds and declares as a matter of public policy that the purpose
 2 of this article is to place upon the manufacturers of manufactured homes the duty to meet their
 3 obligations and responsibilities under the terms of the express warranties extended to the
 4 consumers in this state. The Legislature further finds as a matter of public policy that the
 5 manufacturer shall bear the total cost of performing any duty or responsibility imposed by their
 6 warranties and the provisions of this article.

7 (2) The Legislature further finds that any agreement amended or entered into between a
 8 dealer and manufacturer which would transfer to the dealer any duty, or all or any part of the cost
 9 of performing any duty imposed on the manufacturer by the provisions of this article, or which
 10 would directly or indirectly charge the dealer for or reduce the payment or reimbursement due the
 11 dealer for performing work or furnishing parts required by this article to be provided by either the
 12 dealer or manufacturer, so as to shift to the dealer all or any part of the cost of the manufacturer's

13 compliance with this article, to be against public policy, void and unenforceable.

§46A-6N-2. Definitions.

1 As used in this article:

2 "Consumer" means the purchaser, other than for purposes of resale, of a new
3 manufactured home used primarily for personal, family or household purposes, a person to whom
4 the new manufactured home is transferred for the same purposes during the duration of an
5 express warranty applicable to the manufactured home and any other person entitled by the terms
6 of the warranty to enforce the obligations of the warranty;

7 "Dealer" means any person engaged in this state in the sale, leasing or distributing of new
8 or used manufactured homes, primarily to persons who in good faith purchase or lease a
9 manufactured home for purposes other than resale.

10 "Defect" includes any defect in the performance, construction, components or material of
11 a manufactured home that renders the home or any part of the home not fit for the ordinary use
12 for which it was intended.

13 "Distributor" means any person engaged in this state in the sale and distribution of
14 manufactured homes for resale.

15 "Manufacturer" means any person engaged in manufacturing or assembling manufactured
16 homes, including any person engaged in importing manufactured homes for resale.

17 "Manufactured home" means a structure, transportable in one or more sections, which in
18 the traveling mode is eight body feet or more in width or forty or more feet in length or, when
19 erected on site, is three hundred twenty or more square feet, and which is built on a permanent
20 chassis and designed to be used as a dwelling with or without a permanent foundation when
21 connected to the required utilities, and includes the plumbing, heating, air-conditioning and
22 electrical systems contained therein; except that such term shall include any structure which
23 meets all the requirements of this definition except the size requirements and with respect to
24 which the manufacturer voluntarily files a certificate which complies with the applicable federal

25 standards. Calculations used to determine the number of square feet in a structure will be based
26 on the structure's exterior dimensions measured at the largest horizontal projections when
27 erected on site.

28 "Manufacturer's express warranty" and "warranty" mean the written warranty of the
29 manufacturer of a new manufactured home of its condition and fitness for use, including any terms
30 or conditions precedent to the enforcement of obligations under that warranty.

§46A-6N-3. Manufacturer's duty to repair or replace new manufactured homes.

1 (a) If a new manufactured home does not conform to all applicable express warranties
2 and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer
3 during the term of the express warranties or within a period of one year following the date of
4 original delivery of the new manufactured home to a consumer, whichever is the longer period,
5 the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform
6 the manufactured home to the express warranties, notwithstanding the fact that the repairs are
7 made after the expiration of the warranty term.

8 (b) If the manufacturer, its agents or its authorized dealer are unable to conform the new
9 manufactured home to any applicable express warranty by repairing or correcting any defect or
10 condition which substantially impairs the use or market value of the manufactured home to the
11 consumer after a reasonable number of attempts, the manufacturer shall replace the new
12 manufactured home with a comparable new manufactured home which does conform to the
13 warranties.

14 (c) No authorized dealer may be held liable by the manufacturer for any refunds or
15 manufactured home replacements in the absence of evidence indicating that the dealership
16 repairs have been carried out in a manner substantially inconsistent with the manufacturer's
17 instruction. This section does not create any cause of action by a consumer against an authorized
18 dealer.

§46A-6N-4. Dealer's duty to disclose repairs to consumer.

1 All authorized dealers of new manufactured homes shall provide to a consumer a written
2 disclosure of any repairs to a new manufactured home that have a retail value of five percent of
3 the manufacturer's suggested retail price and were performed after shipment from the
4 manufacturer to the dealer, including damage to the new manufactured home while in transit.

5 This disclosure requirement does not apply to identical replacement of stolen or damaged
6 accessories or their components.

7 For purposes of this section, a manufactured home is not a new manufactured home when
8 it has been previously titled or the manufactured home has been damaged in such a manner that,
9 were the damage not repaired, the value and usability of the manufactured home would be
10 substantially impaired.

§46A-6N-5. Civil action by consumer.

1 (a) If the nonconformity results in substantial impairment to the use or market value of the
2 new manufactured home and the manufacturer has not replaced the new manufactured home
3 pursuant to the provisions of section three of this article, or if the nonconformity exists after a
4 reasonable number of attempts to conform the new manufactured home to the applicable express
5 warranties, the consumer has a cause of action against the manufacturer, in the circuit court of
6 any county having venue.

7 (b) In any action under this section, the consumer may be awarded all or any portion of
8 the following:

9 (1) Revocation of acceptance and refund of the purchase price, including, but not limited
10 to, sales tax, fees, and other reasonable expenses incurred for the purchase of the new
11 manufactured home, or if there is no revocation of acceptance, damages for diminished value of
12 the manufactured home;

13 (2) Damages for the cost of repairs reasonably required to conform the manufactured
14 home to the express warranty;

15 (3) Damages for the loss of use, annoyance or inconvenience resulting from the

16 nonconformity, including, but not limited to, reasonable expenses incurred for replacement
17 housing during any period when the manufactured home is not habitable by reason of the
18 nonconformity or by reason of repair; and

19 (4) Reasonable attorney fees.

20 (c) It is an affirmative defense to any claim under this section: (i) That an alleged
21 nonconformity does not substantially impair the use or market value or (ii) that a nonconformity is
22 the result of abuse, neglect or unauthorized modifications or alterations of a manufactured home
23 by anyone other than the manufacturer, its agent or its authorized dealer.

24 (d) An action brought under this section by the consumer must be commenced within one
25 year of the expiration of the express warranty term.

26 (e) The cause of action provided in this section is available only against the manufacturer.

27 (f) The remedy provided to the consumer in this section is in addition to remedies available
28 under article nine, chapter twenty-one of this code. Therefore, the period of exclusive remedy
29 provided in section eleven-a of that article does not apply to actions filed under this section.

§46A-6N-6. Presumption of reasonable number of attempts; extension of warranty term
when repair services unavailable.

1 (a) It is presumed that a reasonable number of attempts have been undertaken to conform
2 a new manufactured home to the applicable express warranties, if the same nonconformity has
3 been subject to repair three or more times by the manufacturer, its agents or its authorized dealers
4 within the express warranty term or during the period of one year following the date of original
5 delivery of the manufactured home to the consumer, whichever is the earlier date, and the
6 nonconformity continues to exist, or the manufactured home is not habitable by reason of repair
7 for a cumulative total of thirty or more calendar days during the term or during the one-year period,
8 whichever is the earlier date.

9 (b) If the nonconformity results in a condition which is likely to cause death or serious
10 bodily injury if the manufactured home is lived in, it is presumed that a reasonable number of

11 attempts have been undertaken to conform the manufactured home to the applicable express
 12 warranties if the nonconformity has been subject to repair at least once by the manufacturer within
 13 the express warranty term or during the period of one year following the date of original delivery
 14 of the manufactured home to a consumer, whichever is the earlier date, and the nonconformity
 15 continues to exist.

16 (c) The presumption that a reasonable number of attempts have been undertaken to
 17 conform a new manufactured home to the applicable express warranties applies against a
 18 manufacturer only if the manufacturer has received prior written notification from or on behalf of
 19 the consumer and has had at least one opportunity to cure the defect alleged.

20 (d) The term of an express warranty, the one-year period and the thirty-day period shall
 21 be extended by any period of time during which repair services are not available to the consumer
 22 because of a war, invasion, strike or fire, flood or other natural disaster.

§46A-6N-7. Written statement to be provided to consumer.

1 At the time of purchase the manufacturer, either directly or through its agent or its
 2 authorized dealer, must provide the consumer a written statement on a separate piece of paper,
 3 in twelve point all capital type, in substantially the following form: "IMPORTANT: IF THIS
 4 MANUFACTURED HOME IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO
 5 REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO
 6 REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE
 7 MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER
 8 AN OPPORTUNITY TO REPAIR THE MANUFACTURED HOME."

§46A-6N-8. Resale of returned manufactured home.

1 If a new manufactured home has been returned under section three of this article or a
 2 similar statute of another state, it may not be resold in this state unless the manufacturer corrects
 3 the nonconformity and provides the consumer with a written statement on a separate piece of
 4 paper in ten point all capital type, in substantially the following form: "IMPORTANT: THIS

5 MANUFACTURED HOME WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID
6 NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE
7 NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY
8 WEST VIRGINIA LAW.": *Provided*, That a manufacturer may not require by agreement or
9 otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such
10 a manufactured home for resale.

§46A-6N-9. Third party dispute resolution process; Attorney General to promulgate rules.

1 (a) The Attorney General of the State of West Virginia shall promulgate rules for the
2 establishment and qualification of a third party dispute mechanism or mechanisms for the
3 resolution of warranty disputes between the consumer and the manufacturer, its agent or its
4 authorized dealer. The mechanisms shall be under the supervision of the Division of Consumer
5 Protection in the office of the Attorney General, and shall meet or exceed the minimum
6 requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss
7 Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and
8 regulations lawfully promulgated thereunder effective January 1, 1984.

9 (b) If a qualified third party dispute resolution process exists and the consumer receives
10 timely notification in writing of the availability of the third party process with a description of its
11 operation and effect, the cause of action under section five of this article may not be asserted by
12 the consumer until after the consumer has initially resorted to the third party process. Notification
13 of the availability of the third party process must be timely to the consumer. If a qualified third
14 party dispute resolution process does not exist, or if the consumer is dissatisfied with the third
15 party decision, or if the manufacturer, its agent or its authorized dealer fails to promptly fulfill the
16 terms of the third party decision, the consumer may assert a cause of action under section five of
17 this article.

18 (c) Any period of limitation of actions under any federal or West Virginia laws with respect
19 to any consumer is tolled for the period between the date a complaint is filed with a third party

20 dispute resolution process and the date of its decision or the date before which the manufacturer,
21 its agent or its authorized dealer is required by the decision to fulfill its terms, whichever occurs
22 later.

§46A-6N-10. Other remedies available.

1 This article does not limit any right or remedy which is otherwise available to a consumer
2 or authorized dealer of a manufacturer under any other law.

NOTE: The purpose of this bill is to place upon the manufacturers of manufactured homes the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The bill provides consumers additional remedies to enforce the warranties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.