



HOUSE BILL No. 5594

May 31 1994 Introduced by Reps Shugars Hill Bankes Bennane Pitomak London and Dalman and referred to the Committee on Housing and Urban Affairs

A bill to establish a manufactured housing recovery fund in this state to prescribe the powers and duties of certain persons and 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 commerce

7 (c) 'Manufactured home" means a structure that is transport-
8 able in 1 or more sections and that is built on a chassis and
9 designed to be used as a dwelling with or without permanent
10 foundation if connected to the required utilities and includes

1 the plumbing heating air-conditioning and electrical systems
2 contained in the structure

3 (d) "Manufactured home dealer" means a person other than a
4 manufacturer engaged in the business of buying manufactured homes
5 for resale exchange lease or rent or offering manufactured
6 homes for sale lease, rent, or exchange to customers

7 (e) "Manufactured home installer and repairer" means a
8 person, including a manufactured home dealer who for compensa-
9 tion installs or repairs manufactured homes

10 (f) "Manufactured home manufacturer" means a person engaged
11 in manufacturing or assembling manufactured homes or a person
12 engaged in importing manufactured homes into the United States
13 for resale

14 (g) "Manufactured housing recovery fund" or "recovery fund"
15 means the manufactured housing recovery fund created in section
16 3

17 (h) "Mobile home commission act" means Act No 96 of the
18 Public Acts of 1987 being sections 125 2301 to 125 2349 of the
19 Michigan Compiled Laws

20 Sec 3 The manufactured housing recovery fund is created
21 in the department of treasury The recovery fund shall be admin-
22 istered by the department as provided in this act All money
23 remaining in the recovery fund at the end of a fiscal year,
24 including interest earned by the recovery fund, shall be carried
25 over in the recovery fund to the next and succeeding fiscal years
26 and shall not lapse to the general fund

1 Sec 4 (1) A purchaser who obtains a final judgment in a
2 court of record against a manufactured home manufacturer or
3 against a manufactured home installer and repairer or dealer
4 licensed under the mobile home commission act for a failure to
5 honor warranties or contractual obligations, or for fraud will-
6 ful misrepresentation, or a violation of the mobile home commis-
7 sion act or rules promulgated under that act may apply to the
8 court in which the judgment was entered for an order directing
9 payment from the recovery fund pursuant to section 5 if the pur-
10 chaser meets all of the requirements set forth in subsection
11 (3)

12 (2) A manufactured home dealer or installer and repairer
13 licensed under the mobile home commission act who obtains a final
14 judgment in a court of record against a manufactured home manu-
15 facturer for a failure to honor warranties or contractual obliga-
16 tions, or for failure to pay the manufactured home dealer or man-
17 ufactured home installer and repairer for warranty work performed
18 for or on behalf of the manufactured home manufacturer, or for
19 fraud, willful misrepresentation, or a violation of the mobile
20 home commission act or rules promulgated under that act may
21 apply to the court in which the judgment was entered for an order
22 directing payment from the recovery fund pursuant to section 5 if
23 the manufactured home dealer or manufactured home installer and
24 repairer meets all of the requirements set forth in subsection
25 (3)

26 (3) A purchaser described in subsection (1) or a
27 manufactured home dealer or manufactured home installer and

1 repairer described in subsection (2) is eligible for payment from
2 the recovery fund if all of the following are met

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

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

8 (c) The civil action in which the judgment was entered was
9 brought within 1 year after the transaction on which the action
10 was based

11 (d) Notice of the application made under this section was
12 given to the department by service of a copy of the application
13 filed with the court

14 (e) The application under this section is filed after the
15 time for appeal of the judgment has expired and not more than 1
16 year after the termination of all proceedings in the civil action
17 in which the judgment was entered

18 (f) The judgment debtor has failed to pay all or part of the
19 judgment

20 (g) All reasonably available legal remedies including all
21 postjudgment remedies, have been pursued and the judgment remains
22 unpaid

23 (h) The claimant is not a spouse of the judgment debtor or a
24 person representing the spouse of the judgment debtor

25 Sec 5 (1) Upon receipt of an application filed pursuant
26 to section 4, verification that all of the requirements of
27 section 4(3)(a) to (h) have been met, and a hearing at which the

1 department is represented, the court shall order payment from the
2 recovery fund Except as otherwise provided in subsection (3),
3 the order shall direct the department to issue a payment warrant
4 in the amount of the actual and direct loss suffered by the
5 claimant, plus court costs and reasonable attorney fees in an
6 amount of not more than 15% of the amount of the judgment that
7 remains unpaid

8 (2) Upon request of the department the court may require
9 all claimants against a single manufactured home manufacturer
10 manufactured home dealer, or manufactured home installer and
11 repairer to be joined in 1 application so that all claims may be
12 determined and settled equitably If the recovery fund has
13 insufficient funds to pay the unpaid portion of each judgment in
14 full, or if the total amount of the combined unpaid judgments
15 exceeds the limitation prescribed by subsection (3) the court
16 may order that payment from the recovery fund be distributed
17 among the claimants in the same ratio as their respective claims
18 bear to the total amount of claims against the manufactured home
19 manufacturer, manufactured home dealer, or manufactured home
20 installer and repairer or that payments be distributed in some
21 other equitable manner

22 (3) An order issued pursuant to this section shall be for an
23 amount of not more than \$25,000 00 for an individual claim or not
24 more than \$100,000 00 for a group of claims against a single man-
25 ufactured home manufacturer, manufactured home dealer, or manu-
26 factured home installer and repairer in a 12-month period

1 (4) Payment of a claim as a result of an order under this
2 section shall not be made unless the requirements of section 9
3 are met

4 Sec 6 (1) Except as provided in subsection (2) the
5 department shall pay claims against the recovery fund in the
6 order in which the department receives the orders directing pay-
7 ment without regard to the order in which the civil actions were
8 commenced, judgments entered, or applications filed under section
9 4

10 (2) If the amount of money in the recovery fund at a partic-
11 ular time is insufficient to satisfy an order for payment issued
12 pursuant to section 5, the department shall distribute the avail-
13 able money to the claimant. If the order is for combined claims
14 the department shall distribute the available money according to
15 the terms of the order or, if the order does not address the
16 issue of distribution on a pro rata basis. If sufficient money
17 is subsequently deposited in the recovery fund the department
18 shall satisfy the unpaid claims or portions of claims in the
19 order that the orders directing payment were received by the
20 department

21 Sec 7 (1) A manufactured home dealer or manufactured home
22 installer and repairer who receives or renews a license under the
23 mobile home commission act before the effective date of this act
24 and upon whom service cannot be made with reasonable diligence
25 shall be considered to have appointed the department as its
26 attorney in fact upon whom service of process may be made in
27 civil actions described in section 4

1 (2) A manufactured home dealer or manufactured home
2 installer and repairer who receives or renews a license under the
3 mobile home commission act after the effective date of this act
4 shall sign an irrevocable consent with the department appointing
5 the department as its attorney in fact upon whom service of pro-
6 cess may be made in a civil action described in section 4 if
7 service cannot be made with reasonable diligence on the manufac-
8 tured home dealer or manufactured home installer and repairer
9 The consent shall contain the acknowledged signature of an offi-
10 cer owner or partner of the manufactured home dealer or manu-
11 factured home installer and repairer

12 Sec 8 (1) If the department pays an amount from the
13 recovery fund pursuant to section 5 to satisfy a judgment against
14 a manufactured home dealer or manufactured home installer and
15 repairer, the commission shall suspend the license issued under
16 the mobile home commission act of the manufactured home dealer or
17 manufactured home installer and repairer on the effective date of
18 the order or settlement The commission shall not reinstate the
19 license until the manufactured home dealer or manufactured home
20 installer and repairer has repaid in full the amount paid by the
21 recovery fund plus interest at the rate of 12% per annum

22 (2) If the department pays an amount from the recovery fund
23 pursuant to section 5 to satisfy a judgment against a manufac-
24 tured home manufacturer, the manufactured home manufacturer shall
25 not sell a manufactured home in this state until it has repaid in
26 full the amount paid by the recovery fund plus interest at the
27 rate of 12% per annum

1 (3) This section does not prevent the department from taking
2 disciplinary action against a licensee or a manufactured home
3 manufacturer for a violation of the mobile home commission act or
4 rules promulgated under that act The repayment by a licensee of
5 an obligation to the recovery fund does not nullify or modify the
6 effect of another disciplinary proceeding brought under the
7 mobile home commission act or rules promulgated pursuant to that
8 act

9 Sec 9 The recovery fund shall be capitalized at
10 \$2,000,000 00 and shall be funded by fees collected pursuant to
11 section 10 A claim shall not be paid from the fund until the
12 fund contains at least \$500,000 00

13 Sec 10 Except as otherwise provided in this section at
14 the time the purchaser of a manufactured home that is subject to
15 the certificate of title provisions of the mobile home commission
16 act makes application to the department of commerce for the issu-
17 ance of the certificate of title, the department shall collect
18 from the purchaser, in addition to the fee under section 30a of
19 the mobile home commission act, being section 125 2330a of the
20 Michigan Compiled Laws a \$15 00 transaction fee and shall
21 deposit that fee in the recovery fund created in section 3
22 After the balance in the recovery fund reaches \$2,000,000 00, the
23 department shall cease collection of the \$15 00 transaction fee
24 However, if the balance in the recovery fund drops below
25 \$500,000 00, the department again shall collect the \$15 00 trans-
26 action fee until the balance in the recovery fund again reaches
27 \$2,000,000 00