

CHAPTER 161

Original House Bill No. 252

MOBILE HOME WARRANTY ACT

AN ACT to create 35-547 through 35-556 relating to mobile home warranties; requiring written warranties on new mobile homes; providing for implied warranties; providing remedies; providing penalties; and providing requirements for nonresident manufacturers and dealers

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-547 through 35-556 are created to read:

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MOBILE HOME WARRANTY ACT

35-547. Citation. This act shall be known and may be cited as the "Mobile Home Warranty Act of 1975".

35-548. Definitions. As used in this act:

(a) "Defect" means any insufficiency in the performance, construction, components or material of a mobile home that renders the home or any of its parts not fit for the ordinary use for which it was intended or for human habitation;

(b) "Defect which constitutes an imminent safety hazard" means any defect which presents an imminent and unreasonable risk of death or severe personal injury under the National Mobile Home Construction and Safety Standards Act of 1974 and standards and regulations promulgated pursuant thereto;

(c) "Delivery date" means the date on which a mobile home is physically delivered to the site chosen by the mobile home owner;

(d) "Mobile home" means a transportable structure which exceeds either eight (8) body feet in width or thirty-two (32) body feet in length, built on a chassis and designed to be used with or without a permanent foundation, when connected to required utilities, for human occupancy as a residence, or as a temporary or permanent office. The term may include one (1) or more components which can be retracted for towing and subsequently expanded for additional capacity, or two (2) or more units separately towable but designed to be joined into one (1) single unit, as well as a transportable structure designed as a single unit. For purposes of this act only, the term includes the plumbing, heating and electrical systems and all appliances, equipment, furniture and other personal property contained in or affixed to a mobile home on the delivery date:

(e) "Mobile home dealer" or "dealer" means a person who, for any thing of value, sells, exchanges, buys or rents, or attempts to negotiate a sale or exchange of an interest in mobile homes, or who is engaged wholly or in part in the business of selling mobile homes, whether or not the mobile homes are owned by him, excluding:

(i) A receiver, trustee, administrator, executor, guardian or other person appointed by or acting under the judgment or order of any court;

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- (ii) Any public officer while performing his official duty;
- (iii) Any employee of a person enumerated in paragraphs (i) or (ii) of this subsection;
- (iv) Any finance agency as defined in W.S. 34-2-104; and
- (v) A person transferring a mobile home registered in his own name and used for his personal, family or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.
- (f) "Mobile home manufacturer" or "manufacturer" means any person in or out of this state who manufactures or assembles mobile homes for sale in this state;
- (g) "Mobile home owner" or "owner" means any person who purchases or leases a mobile home primarily for personal, family or household purposes, or for business purposes;
- (h) "Mobile home salesperson" or "salesperson" means any person who is employed by a mobile home manufacturer or dealer to sell or lease mobile homes;
- (j) "New mobile home" means a mobile home which has never been occupied, used or sold for personal or business use;
- (k) "Gives notice" means as defined in W.S. 34-1-201(26);
- (m) "Notification" means as defined in W.S. 34-1-201(27);
- (n) "Person" means as defined in W.S. 34-1-201(30);
- (o) "Used mobile home" means a mobile home which has previously been occupied, used or sold for personal or business use;
- (p) "This act" means W.S. 35-547 through 35-557.

35-549. Written warranty; contents.

(a) A written warranty is required for every new mobile home sold or leased by a mobile home manufacturer, dealer or salesperson in this state, and for every new mobile home sold by any person who induces a resident of this state to enter into the transaction by personal solicitation in this state or by mail or telephone solicitation directed to the particular customer in this state. The mobile home warranty from the manufacturer or dealer to the buyer shall be set forth in a separate written document entitled "mobile home warranty", shall be delivered to the buyer by the dealer or manufacturer before the time the contract of sale is signed, and shall contain, but is not limited to, the following terms:

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(i) The mobile home meets federal mobile home construction and safety standards and those standards prescribed by law or administrative rule, if any, of the mobile homes council, which are in effect at the time of its manufacture;

(ii) The mobile home is free from defects if it receives reasonable care and maintenance;

(iii) The mobile home manufacturer or dealer shall take corrective action for defects for which the mobile home owner has given notice to the manufacturer or dealer not later than one (1) year after the delivery date. The mobile home manufacturer or dealer shall make the appropriate adjustments and repairs, within sixty (60) days after notification of the defect, at the site of the mobile home without charge to the mobile home owner, provided, however, that neither manufacturer nor dealer shall be liable for any defect in the mobile home which is the result of improper setup, move, materials furnished or work done by persons other than manufacturer or dealer unless the work was performed by persons under contract or connected by agency with the manufacturer or dealer;

(iv) The mobile home manufacturer or dealer shall take corrective action for any defect which constitutes an imminent safety hazard under applicable federal mobile home construction and safety standards for which the mobile home owner has given notice to the manufacturer or dealer. The mobile home manufacturer or dealer shall bring the mobile home into compliance with applicable standards and correct the defect or have the defect corrected within a reasonable period of time at the site of the mobile home without charge to the owner, but only if:

(A) The defect presents an unreasonable risk of injury or death to occupants of the affected mobile home; or

(B) The defect is related to an error in design or assembly of the mobile home by the manufacturer.

(v) If a repair, replacement, substitution or alteration is made under the warranty and it is discovered, before or after the expiration of the warranty period, that the repair, replacement, substitution or alteration has not restored the mobile home to the condition in which it was warranted except for reasonable wear and tear, such failure shall be deemed a violation of the warranty and the mobile home shall be restored to the condition in which it was warranted to be at the time of the sale except for reasonable wear and tear, at no cost to the purchaser or his assignees, notwithstanding that the additional repair may occur after the expiration of the warranty period;

(vi) The manufacturer and dealer shall be jointly and severally liable to the buyer for the fulfillment of the terms of warranty, and the buyer may give notice to either one (1) or both of the defect.

Notice to either the manufacturer or dealer shall be considered notice to both the manufacturer and dealer. The address and the phone number of where to mail or deliver written notices for both the manufacturer and dealer shall be set forth in the warranty; and

(vii) If during any period of time after notification of a defect the mobile home is uninhabitable because of the defect, that period of time shall not be considered part of the one (1) year warranty period.

(b) Any transfer of a mobile home from one (1) owner or lessee to another during the effective period of the warranty does not terminate the warranty, and subsequent owners or lessees shall be entitled to the full protection of the warranty for the duration of the warranty period as if the original owner or lessee had not transferred the mobile home.

35-550. Implied warranty; indemnity. Whether or not the written warranty required in W.S. 35-549 is delivered to the buyer, there exists an implied warranty to the same extent and in the same circumstances as the written warranty therein provided for, which is binding upon both the dealer and manufacturer. If the dealer makes the adjustments required under W.S. 35-549(a)(iii), (iv)(A) and (B) and (v) the manufacturer shall fully reimburse the dealer for all such adjustments except those to correct defects wilfully caused by the dealer.

35-551. Cumulative remedies; proscription against waiver. Remedies of a mobile home buyer or other person under the warranty provided in W.S. 35-549 and 35-550 are those otherwise provided by law. The warranty under W.S. 35-549 and 35-550 is in addition to and not in derogation of all other rights and privileges which a mobile home buyer or other person may have under any other law or instrument. The contractual waiver of any remedies under any law and the waiver, exclusion, modification or limitation of any warranty, express or implied, including the implied warranty of merchantability and fitness for a particular purpose, is expressly prohibited, is contrary to public policy and is unenforceable and void unless permitted by this act.

35-552. Sale or lease of used mobile homes; inspection; responsibility for repair.

(a) In the sale or lease of any used mobile home by a mobile home dealer, the sales invoice or lease agreement shall contain the point of manufacture of the used mobile home, the name of the manufacturer and the name and address of the previous owner.

(b) No sale or lease of a used mobile home by a mobile home dealer on an "as is" or "with all faults" basis shall be effective to exclude or modify an implied warranty of merchantability or an implied warranty of fitness, unless the mobile home buyer or lessee signs a separate writing made by the dealer listing specifically all substantial defects which are to be exempt from warranty, or unless the defects would not have been discovered by a reasonable inspection by the dealer or lessor before

consummation of the sale or lease.

(c) Directly above the customer's signature the following notice shall be printed all in capital letters:

"THIS IS A LIST OF DEFECTS TO BE EXEMPT FROM WARRANTY IN THIS MOBILE HOME. IF YOU SIGN THIS WRITING, YOU AGREE THAT THE DEALER IS NOT RESPONSIBLE FOR REPAIRING THESE DEFECTS".

35-553. Lessee's rights. Action by a lessee to enforce his rights under this act shall not be grounds for termination of the rental agreement.

35-554. Injunctive relief. The county attorney of any county or the attorney general or the mobile homes council may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery or installation of mobile homes for which written warranties are required under this act, upon an affidavit of the county attorney or attorney general, or the mobile homes council specifying instances of noncompliance with the requirements of this act which illustrate a persistent course of conduct in violation of this act.

35-555. Penalties.

(a) Any person who knowingly or wilfully violates any provision of this act may be fined not more than one thousand dollars (\$1,000.00), and each violation shall be considered a separate offense.

(b) Any person who knowingly and wilfully violates this act in a manner which threatens the health or safety of any purchaser shall be guilty of an aggravated offense and may additionally be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both, and each violation is a separate offense.

(c) Any person recovering a judgment based on an act or omission by the manufacturer, dealer or salesperson, which constituted a violation of this act, shall be entitled to recover reasonable attorney's fees in addition to other recoverable costs. Such fees and costs shall be credited to any fine under the above subsections (a) and (b).

35-556. Jurisdiction and venue over nonresident manufacturers and dealers.

(a) A court of this state shall exercise jurisdiction over nonresident mobile home manufacturers and dealers on the basis of their conduct of business within this state, whether or not the importation or sale is accomplished directly or indirectly through agents, dealers, representatives or transferees.

(b) No mobile home shall be imported into this state unless the manufacturer, dealer and their agents, distributors and transferees

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undertake to provide the warranty required by this act for the benefit of the purchaser.

(c) Each importation of a mobile home for sale in this state by a nonresident manufacturer or dealer is an irrevocable appointment by the manufacturer or dealer of the secretary of state to be his lawful attorney upon whom may be served all legal processes in any action or proceeding against the manufacturer or dealer arising out of the importation of the mobile home into this state.

(d) The secretary of state upon whom processes and notices may be served under this section shall, upon being served with process or notice, mail a copy by registered mail to the nonresident manufacturer or dealer at the nonresident address given in the papers served. The original shall be returned with proper certificate of service attached for filing in court as proof of service. The service fee shall be two dollars and fifty cents (\$2.50) for each defendant served. The secretary of state shall keep a record of all such processes and notices, which record shall show the day and hour of service.

Section 2. If any provision of this act or the applicability thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3. This act is effective ninety (90) days after adjournment of the session of the legislature at which it was enacted.

Approved March 8, 1975.