

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-400
HOUSE BILL 1006**

AN ACT TO GRANT GREATER CONSUMER PROTECTION TO RESIDENTS OF MANUFACTURED HOUSING IN NORTH CAROLINA, TO CLARIFY THE SALES TAX ON MODULAR HOMES, AND TO ESTABLISH MINIMUM CONSTRUCTION AND DESIGN STANDARDS FOR SINGLE-FAMILY MODULAR HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-109.2 reads as rewritten:

"§ 20-109.2. Surrender of title to manufactured home.

(a) Surrender of Title. – If a title has been issued for a manufactured home and the manufactured home qualifies as real property as defined in G.S. 105-273(13), the owner shall submit an affidavit to the Division that the manufactured home meets this definition and surrender the certificate of title to the Division.

(b) Affidavit. – The affidavit must be in a form approved by the Commissioner and shall include or provide for all of the following information:

- (1) The manufacturer and, if applicable, the model name of the manufactured home.
- (2) The vehicle identification number and serial number of the manufactured home.
- (3) The legal description of the real property on which the manufactured home is placed, stating that the owner of the manufactured home also owns the real ~~property~~ property or that the owner of the manufactured home has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed with a copy of the lease or a memorandum thereof pursuant to G.S. 47-18 attached to the affidavit, if not previously recorded.
- (4) A description of any security interests in the manufactured home.
- (5) A section for the Division's notation or statement that the title has been surrendered and cancelled by the Division.

(c) Cancellation. – Upon compliance by the owner with the procedure for surrender of title, the Division shall rescind and cancel the certificate of title. If a security interest has been recorded on the certificate of ~~title~~ title and not released by the secured party, the Division may not cancel the title without written consent from all secured parties. After canceling the title, the Division shall return the original of the affidavit to the owner, or to the secured party having the first recorded security interest, with the Division's notation or statement that the title has been surrendered and has been cancelled by the Division. The owner or secured party shall file the affidavit returned by the Division with the office of the register of deeds of the county where the real property is located. The Division may charge five dollars (\$5.00) for a cancellation of a title under this section.

(d) Application for Title After Cancellation. – If the owner of a manufactured home whose certificate of title has been cancelled under this section subsequently seeks to separate the manufactured home from the real property, the owner may apply for a new certificate of title. The owner must submit to the Division an affidavit containing the same information set out in subsection (b) of this section, verification that the

manufactured home has been removed from the real property, and written consent of any affected owners of recorded mortgages, deeds of trust, or security interests in the real property where the manufactured home was placed. The Commissioner may require evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent. Upon receipt of this information, together with a title application and required fee, the Division is authorized to issue a new title for the manufactured home.

(e) Sanctions. – Any person who violates this section is subject to a civil penalty of up to one hundred dollars (\$100.00), to be imposed in the discretion of the Commissioner."

SECTION 2. G.S. 47-20.6(a) reads as rewritten:

"(a) If the owner of real property or the owner of the manufactured home who has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed has surrendered the title to a manufactured home that is placed on the real property and the title has been cancelled by the Division of Motor Vehicles under G.S. 20-109.2, the owner, or the secured party having the first security interest in the manufactured home at time of surrender, shall record the affidavit described in G.S. 20-109.2 with the office of the register of deeds of the county where the real property is located. Upon recordation, the affidavit shall be indexed on the grantor index in the name of the owner of the manufactured home and on the grantee index in the name of the secured party or lienholder, if any."

SECTION 3. G.S. 47-20.7(a) reads as rewritten:

"(a) A person who owns real property on which a manufactured home has ~~been~~, ~~been~~ or will be ~~placed~~, ~~placed~~ or the owner of a manufactured home who has entered into a lease with a primary term of at least 20 years for the real property on which the manufactured home has been or will be placed, as defined in G.S. 105-273(13), and either where the manufactured home has never been titled by the Division of Motor Vehicles or where the title to the manufactured home has been surrendered and cancelled by the ~~Division~~, Division prior to January 1, 2002, may record in the office of the register of deeds of the county where the real property is located a declaration of intent to affix the manufactured home to the property and may convey or encumber the real property, including the manufactured home, by a deed, deed of trust, or other instrument recorded in the office of the register of deeds."

SECTION 4. G.S. 105-273(13) reads as rewritten:

"§ 105-273. Definitions.

When used in this Subchapter (unless the context requires a different meaning):

(13) "Real property," "real estate," and "land" mean not only the land itself, but also buildings, structures, improvements, and permanent fixtures on the land, and all rights and privileges belonging or in any way appertaining to the property. These terms also mean a manufactured home as defined in G.S. 143-143.9(6) if it is a residential structure; has the moving hitch, wheels, and axles removed; and is placed upon a permanent foundation either on land owned by the owner of the manufactured home or on land in which the owner of the manufactured home has a leasehold interest pursuant to a lease with a primary term of at least 20 years for the real property on which the manufactured home is affixed and where the lease expressly provides for disposition of the manufactured home upon termination of the lease. A manufactured home as defined in G.S. 143-143.9(6) that does not meet all of these conditions is considered tangible personal property."

SECTION 5. Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-14.3. Notice of conversion of manufactured home communities.

(a) In the event that an owner of a manufactured home community (defined as a parcel of land, whether undivided or subdivided, that has been designed to accommodate at least five manufactured homes) intends to convert the manufactured home community, or any part thereof, to another use that will require movement of the manufactured homes, the owner of the manufactured home community shall give each owner of a manufactured home notice of the intended conversion at least 180 days before the owner of a manufactured home is required to vacate and move the manufactured home, regardless of the term of the tenancy. Failure to give notice as required by this section is a defense in an action for possession. The respective rights and obligations of the community owner and the owner of the manufactured home under their lease shall continue in effect during the notice period.

(b) Notwithstanding subsection (a) of this section, if a manufactured home community is being closed pursuant to a valid order of any unit of State or local government, the owner of the community shall be required to give notice of the closure of the community to each resident of the community within three business days of the date on which the order is issued."

SECTION 6. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-143.20A. Display of pricing on manufactured homes.

(a) If the manufacturer of a manufactured home publishes a manufacturer's suggested retail price, that price shall be displayed near the front entrance of the manufactured home.

(b) Each manufactured home dealer shall prominently display a sign and provide to each buyer a notice, developed by the North Carolina Manufactured Housing Board, containing information about the Board, including how to file a consumer complaint with the Board and the warranties and protections provided for each new manufactured home under federal and State law."

SECTION 7. G.S. 143-143.21A reads as rewritten:

"§ 143-143.21A. Purchase agreements; buyer cancellations.

(a) A purchase agreement for a manufactured home shall include all of the following:

- (1) A description of the manufactured home and all accessories included in the purchase.
- (2) The purchase price for the home and all accessories.
- (3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.
- (4) The date the retail purchase agreement is signed.
- (5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.
- (6) The buyer's signature.
- (7) The dealer's signature.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement ~~agreement~~ or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days after receipt of the notice of ~~cancellation~~ cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

- (1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or
- (2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

(f) The Board shall adopt rules concerning the terms of any deposit paid by a buyer to a dealer. The rules may exempt deposits of less than two thousand dollars (\$2,000). To the extent practicable, the rules shall protect the deposits from the claims of the creditors of a dealer that may thereafter be in bankruptcy. The rules shall further provide for the prompt return of a buyer's deposit if the buyer is entitled to its return.

SECTION 8. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-143.10A. Criminal history checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor.
- (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Article. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public

Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 9. G.S. 143-143.10(b) is amended by adding a new subdivision to read:

"(b) In accordance with the provisions of this Article, the Board shall have the following powers and duties:

...

(6) To request that the Department of Justice conduct criminal history checks of applicants for licensure pursuant to G.S. 114-19.13."

SECTION 10. G.S. 143-143.11(b) reads as rewritten:

"(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred dollars (\$300.00) for any license. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A."

SECTION 11. G.S. 143-143.13(a)(12) reads as rewritten:

"(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

~~(12) Conviction of a felony or any crime involving moral turpitude, any crime listed in G.S. 143-143.10A."~~

SECTION 12. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.13. Criminal record checks of applicants for manufactured home manufacturer, dealer, salesperson, or set-up contractor licensure.

The Department of Justice may provide to the North Carolina Manufactured Housing Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor under Article 9A of Chapter 143 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check, and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 13. G.S. 105-164.3(20) reads as rewritten:

"(20) Manufactured home. – A structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development,~~that meets one of the following conditions:~~

- a. ~~Is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.~~
- b. ~~Is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, is built on a permanent chassis, and is transportable in one or more sections."~~

SECTION 14. G.S. 105-164.3 is amended by adding two new subdivisions to read:

"(21a) Modular home. – A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.

(21b) Modular homebuilder. – A person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property."

SECTION 15. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(8) The rate of two and one-half percent (2.5%) applies to the sales price of each modular home sold, including all accessories attached to the modular home when it is delivered to the purchaser. For the purposes of this subdivision, the retail sale is deemed to be the sale of a modular home to a modular homebuilder."

SECTION 16. Part 8 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

§ 105-164.44G. Distribution of part of tax on modular homes.

The Secretary must distribute to counties twenty percent (20%) of the taxes collected under G.S. 105-164.4(a)(8) on modular homes. The Secretary must make the distribution on a monthly basis in accordance with the distribution formula in G.S. 105-520 by including the taxes on modular homes with local tax revenue that is not attributable to a particular county."

SECTION 17. G.S. 143-139.1 reads as rewritten:

§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory. ~~laboratory;~~ minimum standards for modular homes.

(a) Certification. – The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code.

The Building Code Council may also adopt rules to insure that any person that is not licensed, in accordance with G.S. 87-1, and that undertakes to erect a North Carolina labeled manufactured modular building, meets the manufacturer's installation instructions and applicable provisions of the State Building Code. Any such person, before securing a permit to erect a modular building, shall provide the code enforcement official proof that he has in force for each modular building to be erected a \$5,000 surety bond insuring compliance with the regulations of the State Building Code governing installation of modular buildings.

(b) Minimum Standards for Modular Homes. – To qualify for a label or seal under subsection (a) of this section, a single-family modular home must meet or exceed the following construction and design standards:

- (1) Roof pitch. – For homes with a single predominant roofline, the pitch of the roof shall be no less than five feet rise for every 12 feet of run.
- (2) Eave projection. – The eave projections of the roof shall be no less than 10 inches, which may not include a gutter around the perimeter of the home, unless the roof pitch is 8/12 or greater.
- (3) Exterior wall. – The minimum height of the exterior wall shall be at least seven feet six inches for the first story.
- (4) Siding and roofing materials. – The materials and texture for the exterior materials shall be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.
- (5) Foundations. – The home shall be designed to require foundation supports around the perimeter. The supports may be in the form of piers, pier and curtain wall, piling foundations, a perimeter wall, or other approved perimeter supports."

SECTION 18. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 19. Sections 5 through 7 of this act become effective October 1, 2003. Sections 8 through 17 of this act become effective January 1, 2004, and Sections 13 through 16 of this act apply to sales of modular homes on and after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of July, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 5:34 p.m. this 7th day of August, 2003