House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
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CHAPTER 169

SENATE BILL 1436

AN ACT

AMENDING SECTIONS 41-2142, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 245, SECTION 11; AMENDING SECTION 41-2144, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2147, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 245, SECTION 13; AMENDING SECTIONS 41-2152, 41-2153, 41-2154, 41-2172, 41-2173, 41-2174, 41-2175, 41-2176, 41-2177, 41-2179, 41-2180, 41-2181, 41-2182, 41-2186, 41-2190, 41-2191, 41-2193, 41-2195 AND 41-2196, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2142, Arizona Revised Statutes, as amended by Laws 2005, chapter 245, section 11, is amended to read:

41-2142. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.

2. "Act" means the national manufactured home construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and 96-339).

3. "Alteration of units" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but prior to the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.

4. "Board" means the board of manufactured housing.

5. "Broker" means any person who, on behalf of another, sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-2178.

6. "Component" means any part, material or appliance which is built-in as an integral part of the unit during the manufacturing process.

7. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a person licensed by the department.

8. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into or the transfer of title. Consummation of sale does not include warranties.

9. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, subassemblies, manufactured homes or mobile homes

except as exempted in section 41-2178. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

10. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

11. "Department" means the department of fire, building and life safety.

12. "Director" means the director of the department.

13. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

14. "Factory-built building" means a residential or nonresidential building including a dwelling unit or habitable room thereof which is either wholly or in substantial part manufactured at an off-site location to be assembled on-site, except that it does not include a manufactured home, recreational vehicle or mobile home as defined in this section.

15. "HUD" means the United States department of housing and urban development.

16. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

17. "Insignia of approval" means a numbered or serialized label or seal issued by the ~~assistant~~ DEPUTY director of the office of ~~administration~~ MANUFACTURED HOUSING as certification of compliance with this chapter.

18. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.

(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.

(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

19. "Installation supervision" means that the installer may act as an installer of accessory structures for manufactured homes, mobile homes or residential single family factory-built buildings and may also contract with the purchaser or owner of a unit, or a dealer licensed under this chapter, to arrange for, control and supervise all aspects of the installation of a unit and accessory structures, including retaining and supervising persons whose activities are licensed under this chapter. A licensed installer may not contract with the purchaser or owner of a unit or with a dealer licensed under this chapter, to arrange for, retain and supervise a person who is licensed or regulated by an agency other than the office of manufactured housing, unless the licensed installer is also licensed by the same agency which licenses or regulates the person whom the installer retains and supervises. Installation supervision also includes the installer's right, if

authorized by the purchaser, owner or dealer, to seek and obtain recourse, remedies or relief against all persons whose activities are supervised. If requested by a licensed installer or an applicant for an installer's license, and approved by the ~~assistant~~ DEPUTY director pursuant to sections 41-2175 and 41-2176, an installer may obtain a license that includes installation supervision.

20. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.

21. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

22. "Listing agreement" means a document which contains the name and address of the seller, a description of the unit to be listed and the terms which include the period of time that the agreement is in force, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

23. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

24. "Manufactured home" means a structure built in accordance with the act.

25. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

26. "Mobile home" means a structure built prior to June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a dwelling when connected to on-site utilities except recreational vehicles and factory-built buildings.

27. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

28. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

29. "Reconstruction of a unit" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

30. "Recreational vehicle" means a vehicular type unit which is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a

self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

31. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

32. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

33. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

34. "Statutory agent" means an adult person who has been a bona fide resident of this state for at least three years and has agreed to act as agent for a licensee.

35. "Subassembly" means a prefabricated wall, floor, ceiling, roof or similar combination of components.

36. "Title transfer" means a true copy of the application for title transfer which is stamped or validated by the appropriate government agency.

37. "Unit" means a manufactured home, mobile home, factory-built building, subassembly or accessory structures.

38. "Unit safety" means the performance of a unit in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such unit, or any unreasonable risk of death or injury to the user or to the public if such accidents occur.

39. "Used unit" means any unit which is regulated by this chapter and which has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit which was titled in the name of such purchaser.

40. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

Sec. 2. Section 41-2144, Arizona Revised Statutes, is amended to read:

41-2144. Powers and duties of board

A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings, subassemblies and components thereof ~~which shall be~~ THAT ARE reasonably consistent with nationally recognized and accepted publications or generally accepted manufacturing practices pertinent to the construction and safety standards for such item to be manufactured. Such standards shall include minimum requirements for the safety and welfare of the public.

2. Adopt rules imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for manufactured homes ~~which~~ THAT are consistent with the rules and regulations for construction and safety standards adopted by the United States department of housing and urban development.

3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, reconstruction and installation of units or accessory structures as deemed necessary by the board to carry out this chapter.

4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, for inspections, licenses, permits, plan reviews, administrative functions and insignia so that the total annual income derived from such fees will not be less than ninety-five per cent and not more than one hundred five per cent of the anticipated expenditures for the operation of the office of manufactured housing.

5. Adopt rules relating to the inspection throughout the state by the ~~assistant~~ DEPUTY director of the office of manufactured housing of the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a new or used mobile or manufactured home or part of an agreement to move a new or used mobile or manufactured home.

6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes, factory-built buildings and subassemblies regulated pursuant to this chapter.

7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes, factory-built buildings and subassemblies thereof who sell or arrange the sale of such products within this state.

8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.

9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.

10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.

11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.

12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.

13. Adopt such other rules as the board deems necessary for the director to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this article and articles 2 and 4 of this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a new or used mobile or manufactured home or part of an agreement to move a new or used mobile or manufactured home. This paragraph does not apply to:

(a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.

(b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.

(c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.

17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3, the board shall consider for adoption any amendments to the codes and standards referred to in subsection A, paragraphs 1 and 2. If the board adopts the amendments to such codes and standards, the director shall notify the

manufacturers licensed pursuant to article 4 of this chapter ninety or more days prior to the effective date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4.

D. Rules adopted pursuant to subsection A, paragraph 14 shall be standard throughout this state and may be enforced by the local enforcement agencies upon installation to ensure a standard of safety. The board may make an exception to the standard if, on petition by a local jurisdiction participating in the installation inspection program, local conditions justify the exemption or it is necessary to protect the health and safety of the public. On its own motion, the board may revise or repeal any exception.

Sec. 3. Section 41-2147, Arizona Revised Statutes, as amended by Laws 2005, chapter 245, section 13, is amended to read:

41-2147. Director; qualifications; appointment; salary; assistants; powers and duties

A. The governor shall appoint a director of the department pursuant to section 38-211. The director shall serve at the pleasure of the governor.

B. The director shall be experienced in administration and the technical knowledge necessary to administer this chapter.

C. The compensation of the director shall be as determined pursuant to section 38-611.

D. The director with the approval of the governor shall appoint a deputy director, ~~an assistant~~ A DEPUTY director of the office of manufactured housing, the state fire marshal of the office of fire marshal, the state fire training officer~~,~~ AND the fire resource coordinator ~~and an assistant director of the office of administration~~, all of whom serve at the pleasure of the director and are exempt from chapter 4, article 5 of this title. Compensation for the ~~assistant~~ DEPUTY directors and the fire marshal shall be as determined pursuant to section 38-611.

E. The director shall establish and have authority over the functions of the office of manufactured housing, the office of state fire marshal and the office of administration and shall appoint employees necessary to perform the duties of articles 2, 3~~,~~ AND 4 ~~and 6~~ of this chapter.

F. The director shall employ any deputies, investigators and assistants and shall procure all equipment and records that are necessary to enforce this chapter. With respect to the enforcement of section 41-2194, the director or the director's designees are vested with the authority to issue a citation in accordance with section 13-3903 or to issue a cease and desist order to any violators of this chapter. When the director or the director's designees conduct investigations they may receive criminal history record information from the department of public safety and other law enforcement entities.

G. In order to protect public health, safety and welfare, the director may revoke or suspend a license.

H. The director may issue citations to licensees for alleged violations of ~~any of the provisions of~~ this chapter or rules adopted pursuant to this chapter.

I. The director, on the director's motion or on the written request of the licensee, may reduce, at the director's discretion, the amount of any administrative penalty imposed.

Sec. 4. Section 41-2152, Arizona Revised Statutes, is amended to read:

41-2152. Definitions

In this article, unless the context otherwise requires:

1. "~~Assistant~~ DEPUTY director" means the ~~assistant~~ DEPUTY director of the office.

2. "Office" means the office of manufactured housing within the department.

Sec. 5. Section 41-2153, Arizona Revised Statutes, is amended to read:

41-2153. Powers and duties of the deputy director; work by unlicensed person; inspection agreement; permit

A. The ~~assistant~~ DEPUTY director under the authority and direction of the director shall administer the provisions of this article and the rules adopted by the board.

B. The ~~assistant~~ DEPUTY director shall:

1. Establish a state inspection and design approval bureau within the office.

2. Enter into reciprocity agreements and compacts with other states or private organizations which adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article upon determining that such standards are being enforced. The ~~assistant~~ DEPUTY director may void such agreements upon determining such standards are not being maintained.

3. Authorize affixment of insignia to indicate compliance with the construction and installation requirements of this article.

4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by ~~such assistant~~ THE DEPUTY director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated ~~the provisions of~~ this article or the rules adopted pursuant to article 1 of this chapter.

5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the ~~assistant~~ DEPUTY director is monitoring their performance to be consistent with the installation standards of the office.

6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile

home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.

7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to article 1 of this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The ~~assistant~~ DEPUTY director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the ~~assistant~~ DEPUTY director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.

8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

9. Verify written complaints filed with the office by purchasers within one year from the date of purchase or installation of units. Complaints shall be accepted from consumers which allege violations by any dealer, broker, salesperson, installer or manufacturer ~~of the provisions~~ of this chapter or the rules adopted pursuant to this chapter.

10. Upon verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.

C. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection B, paragraph 10 OF THIS SECTION. Failure to respond is grounds for disciplinary action pursuant to section 41-2186.

D. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the ~~assistant~~ DEPUTY director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

E. The ~~assistant~~ DEPUTY director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the ~~assistant~~ DEPUTY director is monitoring their performance to be consistent with this article, rules adopted pursuant to this article and the established

procedures of the office. If the ~~assistant~~ DEPUTY director determines that the person's or organization's performance is not consistent with this article, rules adopted pursuant to this article and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

F. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the ~~assistant~~ DEPUTY director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days of receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours from the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days of its receipt, the ~~assistant~~ DEPUTY director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.

Sec. 6. Section 41-2154, Arizona Revised Statutes, is amended to read:

41-2154. Submission of construction, reconstruction or alteration plans by manufacturers; approval; revocation

A. Prior to the construction of any new model of factory-built building or subassembly, each manufacturer who intends to manufacture for delivery or sell such unit in this state shall submit to the director for approval detailed plans of each model and shall have obtained such approval.

B. Prior to reconstruction of any factory-built building, including those for which the director has not approved plans before construction, the licensee shall submit to the director for approval detailed plans of the factory-built building that indicate conformance with this state's adopted codes as certified by an engineer who is registered pursuant to title 32, chapter 1.

C. Prior to installation of a factory-built building or accessory structure, each licensee who intends to accomplish the construction shall submit to the director for approval detailed plans for each project and shall obtain the director's approval.

D. The office or a third party inspector who is authorized by the ~~assistant~~ DEPUTY director to verify compliance with the approved plans shall inspect the factory-built building.

E. A plan approval may be immediately suspended by the written notice of the ~~assistant~~ DEPUTY director if the ~~assistant~~ DEPUTY director has reasonable cause to believe that the licensee is not complying with the plan as approved or that the licensee has used inferior materials or workmanship in construction. This notice shall be served by personal service to an in-state licensee and by certified mail to an out-of-state licensee. Service

of process by certified mail is complete after forty-eight hours from the time of deposit in the mail.

Sec. 7. Section 41-2172, Arizona Revised Statutes, is amended to read:

41-2172. Definitions

In this article, unless the context otherwise requires:

1. "~~Assistant~~ DEPUTY director" means the ~~assistant~~ DEPUTY director of the office OF MANUFACTURED HOUSING.

2. "Office" means the office of administration within the department.

Sec. 8. Section 41-2173, Arizona Revised Statutes, is amended to read:

41-2173. General powers and duties

The director shall appoint the ~~assistant~~ DEPUTY director ~~of the office of administration~~ who shall, under the authority and direction of the director:

1. Administer the provisions of this article.

2. Provide personnel, clerical, accounting, fiscal and budget support for the department and other functions designated by the director.

3. Establish licensing and regulation procedures in accordance with ~~the provisions of~~ this article and issue certification documents for compliance with the licensing and bonding requirements of this article.

4. Issue certification insignia to indicate compliance with the construction and installation requirements of article 2 of this chapter.

5. Provide for investigative support, enforcement, penalty procedures, hearings and rehearings in accordance with ~~the provisions of~~ this chapter.

6. Establish field offices for the department as required.

7. Issue permits to licensees, owners of units and other persons for the installation of manufactured homes, mobile homes and factory-built buildings and the rehabilitation of mobile homes.

Sec. 9. Section 41-2174, Arizona Revised Statutes, is amended to read:

41-2174. Budget; disposition of revenues; report

A. The ~~assistant~~ DEPUTY director shall annually prepare and submit a budget estimate and appropriation request for the department pursuant to title 35, chapter 1.

B. At least once each week the ~~assistant~~ DEPUTY director shall deposit, pursuant to sections 35-146 and 35-147, all monies received by the department pursuant to this chapter in the state general fund.

Sec. 10. Section 41-2175, Arizona Revised Statutes, is amended to read:

41-2175. Qualifications and requirements for license

A. A manufacturer, dealer, broker, salesperson or installer license shall be issued by the ~~assistant~~ DEPUTY director.

B. The ~~assistant~~ DEPUTY director shall:

1. Classify and qualify applicants for a license.

2. Conduct such investigations as the ~~assistant~~ DEPUTY director deems necessary.

3. Establish and administer written examinations for the applicable class license.

C. The ~~assistant~~ DEPUTY director may establish experience requirements for installers of manufactured homes, mobile homes and accessory structures.

D. To obtain a license pursuant to this article, the applicant shall submit to the ~~assistant~~ DEPUTY director a notarized application on forms prescribed by the office together with the required license fee. Such application shall contain the following information:

1. A designation of the classification of license sought by the applicant.

2. The name, birth date and address of an individual applicant.

3. If the applicant is a partnership, the name, birth date and address of all partners with a designation of any limited partners.

4. If the applicant is a corporation, association or other organization, the names, birth dates and addresses of the president, vice-president, secretary and treasurer.

5. For all licenses, except those for salespersons, the name, birth date and address of the qualifying party. The qualifying party must reside within the state of the principal place of the licensee's business and shall not act in the capacity of a qualifying party for more than one license in the same classification.

6. If the applicant is a corporation, evidence that the corporation is in good standing with the Arizona corporation commission.

7. Whether the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, all officers, if the applicant is a corporation or other type of association, the general partner, if the applicant is a limited partnership, or the individual, if the applicant is a salesperson, has ever been charged or convicted of a felony, or has ever received an adverse final decision in a civil action alleging fraud or misrepresentation, and, if so, the nature of the action and the final disposition of the case.

8. For corporations, the name and address of a statutory agent appointed by the licensee on whom legal notices, summonses or other processes may be served, which service shall be deemed personal service upon the licensee.

9. If it is an application for a salesperson's license, the applicant shall designate an employing dealer or broker and the application shall include the signature of the qualifying party or the qualifying party's designee.

10. Other information as the ~~assistant~~ DEPUTY director may deem necessary.

E. Prior to the issuance of any license pursuant to this article, the owner, if the applicant is a sole proprietorship, all partners, if the applicant is a partnership, the general partner, if the applicant is a limited partnership, the president, vice-president, secretary, and treasurer,

if the applicant is a corporation or other type of association, the individual, if the applicant is a salesperson, and the qualifying party shall be of good character and reputation and shall submit a fingerprint card for background analysis. Lack of good character and reputation may be established by showing that such person has committed any act which, if committed by any licensee, would be grounds for suspension or revocation of such license.

F. To obtain a license pursuant to this article, a person shall not have had a license refused or revoked within one year prior to the date of the application nor have engaged in the business without first having been licensed nor shall a person act as a licensee between the filing of the application and actual issuance of the license. As used in this subsection, "person" means an applicant, an individual, a qualifying party, any partner of a partnership or any officer, director, qualifying party or owner of forty per cent or more of the stock or beneficial interest of a corporation.

G. Prior to issuance of a dealer, broker or installer license, the qualifying party, in addition to meeting the requirements provided in subsection D, shall successfully show, by written examination within three attempts, qualification in the kind of work or business in which the applicant proposes to engage.

H. No license shall be issued to a minor or to any partnership in which one of the partners is a minor.

I. Every salesperson who holds an active license shall maintain on file with the office a current residence address and shall notify the office within five working days of any change of address, of any discontinued employment, and where, if anywhere, the salesperson is currently working.

J. The license of a salesperson who is no longer employed by the dealer of record is deemed inactive, and the salesperson shall turn in the license to the office until the salesperson is employed by another dealer and a written notification of the change has been received by the office. On notification, the office shall return the license to the salesperson.

Sec. 11. Section 41-2176, Arizona Revised Statutes, is amended to read:

41-2176. Issuance of a license

A. Upon receipt by the ~~assistant~~ DEPUTY director of the nonrefundable fee required by this article and an application furnishing complete information as required by the ~~assistant~~ DEPUTY director and upon the applicant taking and passing the applicable examination required by section 41-2175, the ~~assistant~~ DEPUTY director shall issue a license to the applicant, pending completion of the background analysis, permitting the applicant to engage in business pursuant to this article for one year.

B. Pursuant to the agreement for conditional license, the applicant shall agree to a revocation of the conditional license if it appears, on review of the background analysis, that the applicant has misrepresented its background. The applicant shall also agree to waive any right the applicant

may have to a stay of the effectiveness of any order of revocation of the conditional license, the right to notice of hearing and the right to a hearing before the revocation of the license.

C. The agreement for conditional license does not prohibit the applicant from making a written demand for a hearing on the order of revocation pursuant to chapter 6, article 10 of this title. Pending the hearing, the applicant shall not continue to transact business under the conditional license.

D. On completion of the background analysis, the director may issue either a permanent or a probationary license, depending on the results of the background analysis.

E. Licenses issued pursuant to this article and any annual renewals shall be signed by the ~~assistant~~ DEPUTY director or the ~~assistant~~ DEPUTY director's designated representative and by the licensee. The license is nontransferable and satisfactory evidence of the possession shall be exhibited by the licensee upon demand. The license held by the licensee shall be posted in a conspicuous place on the premises where any business is being performed. A license card shall be carried by the person doing the work away from the premises where the license is posted. The license number shall be written on any contract entered into by the licensee.

F. If an application for a license is denied or if the applicant fails to supply complete and correct required information within ninety days or fails to pass the required written examination within ninety days after filing or if an application for renewal is not completed by the expiration date or if any applicant requiring examination after having been notified by letter of the date to appear fails to appear for the examination within ninety days from the date of filing the application, the fee paid by the applicant upon filing the application is forfeited and the application is terminated. A reapplication for a license shall be accompanied by the fee prescribed by the ~~assistant~~ DEPUTY director.

G. If, before the issuance of the license, information brought to the attention of the ~~assistant~~ DEPUTY director concerning the qualifications of the applicant is such that in the ~~assistant~~ DEPUTY director's discretion it may be proper to deny the license, the ~~assistant~~ DEPUTY director may notify the applicant that the license is denied and that the applicant may request in writing a hearing if the applicant so desires.

H. The licensee may not engage in the sale of units, either new or used, unless the licensee maintains an office where the records are available for inspection and the location is listed on the license application as the principal place of business.

Sec. 12. Section 41-2177, Arizona Revised Statutes, is amended to read:

41-2177. Renewal of licenses; license status

A. Licenses issued under this article shall expire one year from the date of issuance. An application for renewal of any current license with

evidence of a valid bond or cash deposit when accompanied by the required fee and received by the ~~assistant~~ DEPUTY director before the expiration date shall authorize the licensee to operate until actual issuance of the renewal license for the ensuing year.

B. A license which expires may be reactivated and renewed within one year of its expiration by filing the required renewal application, signed by the licensee or qualifying party for a business licensee, evidence of a valid bond and payment of a fee of one hundred twenty-five per cent of the amount required for that license class. When a license has been expired for more than one year for failure to renew, a new application for license shall be made and a new license issued pursuant to this article. If the license has been expired for more than one year, the fee required shall be two hundred per cent of the fee required for that license class.

C. An applicant for renewal of a license issued pursuant to this article shall not be required to take a written examination.

D. A license is not transferable. Any change in the legal entity of a ~~license~~ LICENSEE that includes any change in the ownership of a sole proprietorship~~,~~ OR a partner of a partnership or IN the creation of a new corporate entity requires a new license.

E. A license may be cancelled on the written request of the owner of a sole proprietorship, a partner of a partnership or, in the case of a corporation, any person with written evidence of his authority to request the cancellation. A salesperson's license may be cancelled on the written request of the salesperson. The director may refuse to accept voluntary cancellation of a license if good cause may exist for disciplinary action.

F. If possible, the licensee shall notify the director in writing of the disassociation of a qualifying party before the action, and in any event no later than five business days after the action. The licensee shall also notify the director as to who will be temporarily responsible for the operation of the business. The absence of a written designated qualifying party for sixty days is grounds for suspension of the license. If a person ceases to be the qualifying party for a licensee, the person shall notify the office within five days.

G. An application for a new qualifying party shall include the completion of the prescribed forms, fingerprints and testing, if applicable, in accordance with sections 41-2175 and 41-2176.

H. A licensee may request the ~~assistant~~ DEPUTY director, on forms prescribed by the ~~assistant~~ DEPUTY director, to inactivate ~~his~~ THE LICENSEE'S current license for a period of not more than two years. In the absence of any disciplinary proceeding or disciplinary suspension and on payment of reasonable fees determined by the board the ~~assistant~~ DEPUTY director may issue an inactive license certificate to the licensee if the licensee has turned in his license. The inactive license certificate may consist of an endorsement on the licensee's license stating that the license is inactive. The ~~assistant~~ DEPUTY director may not refund any of the license renewal fee

which a licensee paid before requesting inactive status. A licensee's license which is not suspended or revoked and is inactive shall be reactivated as an active license on payment of the current year's renewal fee and thirty days' written notice to the ~~assistant~~ DEPUTY director. No examination may be required to reactivate an inactive license. If the license is not reactivated within two years, a new application for licensing must be made and the new license issued pursuant to this chapter. No licensee may inactivate the license more than once. The holder of an inactive license shall not work as a licensee until his license is reactivated as an active license. The inactive status of a licensee's license does not bar any disciplinary action by the ~~assistant~~ DEPUTY director against a licensee for any of the grounds stated in this chapter.

Sec. 13. Section 41-2179, Arizona Revised Statutes, is amended to read:

41-2179. Bonds, cash deposits; requirements; fund

A. Before granting an original license, the ~~assistant~~ DEPUTY director shall require of the applicant, except an applicant for salesperson or broker of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings, a surety bond in a form acceptable to the ~~assistant~~ DEPUTY director or a cash deposit pursuant to this section. A separate bond or cash deposit shall be required for each branch location of any licensed manufacturer or installer. No license shall be renewed unless the applicant's surety bond or cash deposit is in full force and effect. A change of location of a licensee's principal place of business requires a rider or endorsement to the existing bond and payment of the administrative function fee. The rider or endorsement shall indicate the new location and acceptance of claims for the previous location.

B. The bonds or cash deposit shall be in amounts prescribed by the board.

C. The surety bonds shall be executed by the applicant as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the ~~assistant~~ DEPUTY director in a form prescribed by the ~~assistant~~ DEPUTY director. The applicant may in the alternative establish a cash deposit in the amount of the bond with the state treasurer pursuant to the rules adopted by the ~~assistant~~ DEPUTY director. The bond funds shall be deposited, pursuant to sections 35-146 and 35-147, in a special account to be known as the consumer recovery fund. The state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Such cash deposits may be withdrawn, if there are no outstanding claims against them, two years after the termination of the license in connection with which the cash is deposited. The cash deposit may be withdrawn two years after the filing of a commercial surety bond as a replacement to the cash deposit.

D. The bond or deposit required by this section shall be in favor of the state for the benefit of any person covered by this subsection. The bond or deposit shall be subject to claims by:

1. Any consumer of a unit regulated by this chapter who enters into an agreement with any licensee, except a salesperson or broker of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings, and is damaged by the failure of the principal to perform a sales or installation agreement or to perform repairs under a warranty.

2. The ~~assistant~~ DEPUTY director, if the principal fails to pay any of the fees or costs which the principal owes the office.

E. Any person claiming against the bond or deposit, except the department, may maintain an action against the principal and the surety. Such principal's bond or deposit may be sued upon in successive actions until the full amount is exhausted. No suit may be commenced on the bond or deposit after the expiration of two years after the date of sale or installation of the unit, whichever is later, on which the suit is based, except that the time for purposes of the claim for fraud shall be measured pursuant to section 12-543.

F. The surety bond or deposit shall be continuous in form and shall contain the condition that the total aggregate liability of the surety or depository for all claims shall be limited to the face amount of the bond or depository irrespective of the number of years the bond or depository is in force. If the corporate surety desires to make payment without awaiting court action, the amount of the bond filed shall be reduced to the extent of any payment or payments made by the corporate surety in good faith. Any such payments shall be based on priority of written claims received by the corporate surety prior to court action. The surety bond or depository shall be continuous as long as the corporate surety or the depositor maintains the face amount of the bond or deposit. Failure to maintain the face amount of the bond or deposit constitutes a suspension of such license until the face amount of the bond or deposit is restored.

G. The corporate surety shall notify the ~~assistant~~ DEPUTY director of the intent of the principal to cancel the bond and of any monies paid from the bond. Upon receipt by the ~~assistant~~ DEPUTY director of notice to cancel a bond by any corporate surety, the ~~assistant~~ DEPUTY director shall immediately notify the licensee who is the principal on the bond of the effective date of cancellation of the bond and that the licensee shall furnish a like bond or make cash deposit on or before the effective date of cancellation or the license shall be suspended. Notice to the licensee shall be by certified mail postage fully prepaid, addressed to the licensee's last address of record with the office. The license shall be suspended on the date the bond is canceled unless a replacement bond or cash deposit in lieu of a bond is on file with the ~~assistant~~ DEPUTY director.

H. The director and ~~assistant~~ DEPUTY director shall have no personal liability for the performance of duties relating to the bond and cash deposit requirements of this section if such duties are performed in good faith.

Sec. 14. Section 41-2180, Arizona Revised Statutes, is amended to read:

41-2180. Trust and escrow requirements; rules; exemptions

A. Each dealer or broker who is licensed pursuant to this article and who sells manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings shall maintain a trust account or an escrow account with a financial institution or escrow agent located in this state and shall deposit all earnest money received for the sale of manufactured homes, mobile homes or factory-built buildings designed for use as residential dwellings in such account. The department shall conduct an audit of each dealer's or broker's trust or escrow account at least once every two years.

B. All dealers or brokers shall notify the ~~assistant~~ DEPUTY director in writing when the trust or escrow account has been established by indicating the name and number of the account and the name and location of the financial institution used.

C. The dealer or broker, in writing, shall authorize the depository to release any and all information relative to trust or escrow accounts to the ~~assistant~~ DEPUTY director or his agent, employee or deputy.

D. The dealer's or broker's earnest money receipt book shall reflect all earnest monies received and shall be at the minimum in duplicate and consecutively numbered.

E. All earnest monies shall be deposited in the escrow account or trust fund account no later than the close of the second banking business day after receipt.

F. A dealer or broker may deposit and maintain up to two hundred dollars in the trust account to offset service charges that may be assessed by the financial institutions.

G. Every deposit into a trust account shall be made with a deposit slip which identifies each transaction as follows:

1. The amount of deposit.

2. The names of all parties involved in the transaction.

All receipts for monies deposited in escrow shall be made accountable by containing the same information.

H. A complete record shall be retained by the dealer's or broker's office of all earnest monies received. The record shall contain provisions for entering:

1. The amount received.

2. From whom the money was received.

3. The date of receipt.

4. The place of deposit.

5. The date of deposit.

6. The daily balance of the trust fund account deposit of each transaction.

7. When the transaction has been completed.

8. Date and payment for all goods and services the dealer has contracted to provide.

I. All earnest money deposited in the trust or escrow account shall be held in such account until one of the following is completed:

1. An application for title transfer has been made.

2. The transaction involved is consummated or terminated and a complete accounting is made.

J. Upon completion of subsection I of this section the earnest money deposit shall be conveyed to the lending institution or the dealer, broker, purchaser, seller, manufacturer or lienholder, whichever is applicable.

K. The dealer or broker shall retain true copies of the purchase agreements, earnest money receipts, depository receipts, evidence of delivery documents and evidence of consummation of sale or termination of sale for a period of three years.

L. The deposits referred to in this section shall not be utilized for any purpose other than the transaction for which they were provided.

M. Notwithstanding any other provision of this section, before an event listed under subsection I of this section is completed, a licensed dealer may release trust account earnest monies to pay for flooring or inventory for the unit that is the subject of the transaction for which the earnest monies were provided. Either a licensed dealer or broker may release trust account earnest monies to pay other lawfully imposed interim loan amounts and charges imposed by a financial institution or other bona fide lender on the unit that is the subject of the transaction for which the earnest monies were provided. The dealer or broker shall not make any payment out of trust account monies pursuant to this subsection unless done in compliance with all of the following:

1. The payment is made no more than ten business days prior to the completion date pursuant to subsection I OF THIS SECTION.

2. The payment is made directly to the financial institution or other bona fide lender.

3. The payment is recorded in the dealer's or broker's records under this section and documented by a receipt, a payment record or any other evidence from the financial institution or lender.

4. If the transaction is terminated, the dealer or broker replaces the amount of the payment in the trust account within three business days after receiving written notification of the termination.

This subsection does not affect any other rights or obligations between the purchaser and the licensed dealer or broker.

N. The board shall adopt separate rules for dealer trust and escrow accounts and broker trust and escrow accounts. At a minimum, these rules shall contain trust and escrow account requirements for the following:

1. Record keeping.
2. Administration.
3. Service fees or charges.
4. Deposits.
5. Advances or payments out of trust and escrow accounts.
6. Closing or termination of sales transactions.
7. Auditing or investigation of trust or escrow account complaints.

0. This section shall not apply to a real estate broker or salesperson licensed pursuant to section 32-2122 and pursuant to this article when the unit is sold in conjunction with real estate.

Sec. 15. Section 41-2181, Arizona Revised Statutes, is amended to read:

41-2181. Complaints; citation; failure to respond; hearing

A. The office shall issue a citation upon failure to respond or upon the verified written complaint of a purchaser pursuant to section 41-2153, subsection B, paragraph 9 and shall issue a citation directing the licensee, within ten days after service of the citation upon the licensee, to appear by filing with the office a verified answer to the complaint showing cause why the license should not be revoked or suspended. The ~~assistant~~ DEPUTY director, after conducting an investigation pursuant to section 41-2186, may issue a citation on the ~~assistant~~ DEPUTY director's own initiative.

B. Failure of the licensee to answer shall be deemed an admission by the licensee of the cited complaint or failure to respond as charged in the citation, and the office may suspend or revoke such license without a hearing.

C. A person served with a citation or with a cease and desist order by the state fire marshal may request a hearing pursuant to chapter 6, article 10 of this title.

Sec. 16. Section 41-2182, Arizona Revised Statutes, is amended to read:

41-2182. Cosmetic complaints; process; walk-through; definition

A. Notwithstanding sections 41-2153 and 41-2181, a purchaser of a new manufactured home shall file a complaint concerning cosmetic, superficial or minor matters relating to the manufactured home no more than one hundred twenty days after the date of installation or the designated cosmetic complaint date prescribed in section 41-2182.01.

B. The ~~assistant~~ DEPUTY director ~~of the office of manufactured housing~~ shall not process or verify a complaint described in subsection A of this section if the complaint is filed more than one hundred twenty days after the date of installation or the designated cosmetic complaint date prescribed in section 41-2182.01, unless the ~~assistant~~ DEPUTY director finds, after written notice to the interested parties, that the complaint involves major or structural matters relating to the manufactured home.

C. The board shall adopt rules establishing procedures for complaints filed pursuant to this section, including rules for determining the date of installation of a new manufactured home.

D. This section does not apply if, within thirty days after the date of installation or the designated cosmetic complaint date prescribed in section 41-2182.01, the manufacturer or dealer of the new manufactured home has not conducted a walk-through of the home with the purchaser or the purchaser's representative and has not completed a walk-through checklist on a form approved by the board. The walk-through checklist form shall contain a notice to the purchaser, located immediately above the signature lines and in bold print, advising the purchaser that all cosmetic, superficial or minor matters found during the walk-through should be listed on the form and that the complaint filing period for cosmetic, superficial or minor matters is one hundred twenty days from either the date of installation of the home or the designated cosmetic complaint date prescribed in section 41-2182.01.

E. For the purposes of this section, "cosmetic, superficial or minor matters" means any defect or condition that renders a part of the home not fit for its intended, expected or ordinary use or appearance, including defects or conditions that involve the appearance of the home's structural, electrical, plumbing, mechanical or gas systems. Cosmetic, superficial or minor matters do not include defects or conditions involving the performance of the home's structural, electrical, plumbing, mechanical or gas systems.

Sec. 17. Section 41-2186, Arizona Revised Statutes, is amended to read:

41-2186. Grounds for disciplinary action

The ~~assistant~~ DEPUTY director may, upon the ~~assistant~~ DEPUTY director's own motion, and shall, upon the complaint in writing of any person, cause to be investigated by the office the acts of any manufacturer, dealer, broker, salesperson or installer licensed with the office and may temporarily suspend or permanently revoke any license issued under this article, impose an administrative penalty or place on probation any licensee, if the holder of the license, while a licensee, is guilty of or commits any of the following acts or omissions:

1. Failure in any material respect to comply with ~~the provisions of~~ this article or article 2 of this chapter.

2. Violation of any rule that is adopted by the board and that pertains to the construction of any unit or of any rule that is adopted by the board and that is necessary to effectively carry out the ~~provisions and~~ intent of this article, article 2 of this chapter or the laws of the United States or of this state.

3. Misrepresentation of a material fact by the applicant in obtaining a license.

4. Aiding or abetting an unlicensed person or knowingly combining or conspiring with an unlicensed person to evade ~~the provisions of~~ this article or article 2 of this chapter, or allowing one's license to be used by an

unlicensed person or acting as an agent, partner or associate of an unlicensed person with intent to evade ~~the provisions of~~ this article or article 2 of this chapter.

5. Conviction of a felony.

6. The doing of a wrongful or fraudulent act by a licensee which relates to this article or article 2 of this chapter.

7. Departure from or disregard of any code or any rule adopted by the board.

8. Failure to disclose or subsequent discovery by the office of facts which, if known at the time of issuance of a license or the renewal of a license, would have been grounds to deny the issuance or renewal of a license.

9. Knowingly entering into a contract with a person not duly licensed in the required classification for work to be performed for which a license is required.

10. Acting in the capacity of a licensee under any license issued under this article in a name other than as set forth upon the license.

11. Acting as a licensee while the license is under suspension.

12. Failure to respond relative to a verified complaint after notice of such complaint.

13. Violation of title 28, chapter 10 or rules adopted pursuant to title 28, chapter 10, except for the licensing requirements of sections 28-4334, 28-4335, 28-4361, 28-4362, 28-4364, 28-4401 and 28-4402.

14. False, misleading or deceptive sales practices by a licensee in the sale or offer of sale of any unit regulated by this article or article 2 of this chapter.

15. Failure to remit the consumer recovery fund fee pursuant to section 41-2189.

16. Acting as a salesperson while not employed by a dealer or broker.

17. As a salesperson, representing or attempting to represent a dealer or broker other than by whom the salesperson is employed.

18. Failure by a salesperson to promptly place all cash, checks and other items of value and any related documents received in connection with a sales transaction in the care of the employing dealer or broker.

19. Failure to provide all agreed on goods and services.

20. Failure to manufacture or install in a workmanlike manner all subassemblies, units and accessory structures which are suitable for their intended purpose.

21. Failure of the licensee to work only within the scope of the license held.

22. An action by a licensee, who is also a mobile home park owner, manager, agent or representative, that restricts a resident's or prospective resident's access to buyers, sellers or licensed dealers or brokers in connection with the sale of a home or the rental of a space, that the department finds constitutes a violation of section 33-1434, subsection B or

section 33-1452, subsection E or that violates any law or regulation relating to fair housing or credit practices.

Sec. 18. Section 41-2190, Arizona Revised Statutes, is amended to read:

41-2190. Recovery from fund; claim against licensee; subrogation; appeal; statute of limitations

A. If any consumer who is buying or selling the consumer's home uses the services of a licensed dealer or broker of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings and is damaged as a result of an act or omission by a licensed dealer or broker of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings which constitutes a violation of section 41-2180, or rules adopted pursuant to that section, that consumer may file a claim with the office for payment from the consumer recovery fund. The claim shall be verified by the office.

B. If any consumer of manufactured homes, mobile homes or factory-built buildings designed for use as residential buildings is damaged by the failure of the principal to perform a sales agreement or to perform repairs under a warranty, the consumer may file a claim with the office for payment from the consumer recovery fund. The claim shall be verified by the office.

C. Upon verification of the claim for payment, the ~~assistant~~ DEPUTY director shall provide for a hearing pursuant to chapter 6, article 10 of this title.

D. The board shall pay from the consumer recovery fund whatever sum the administrative law judge finds payable upon the claim. A decision granting a claim shall include an order suspending the license of the licensee upon whose account the claim was filed. Such a license shall remain on suspension until the licensee has repaid in full, plus interest at the rate of ten per cent per year, the amount paid from the consumer recovery fund on the licensee's account.

E. Any party aggrieved by the administrative law judge's decision may apply for a rehearing by filing with the ~~assistant~~ DEPUTY director a motion in writing pursuant to chapter 6, article 10 of this title. The filing of a motion for rehearing shall suspend the operation of the administrative law judge's order pending the decision of the director upon the rehearing.

F. Except as provided in section 41-1092.08, subsection H, any person aggrieved by a final administrative decision may seek judicial review pursuant to title 12, chapter 7, article 6.

G. The consumer recovery fund has a claim against the licensee on whose account a claim was granted for the amount paid plus costs, necessary expenses and reasonable attorney fees.

H. The ~~assistant~~ DEPUTY director is subrogated to the claim of the consumer recovery fund against the bond and other assets of the licensee.

The ~~assistant~~ DEPUTY director shall deposit any amount recovered into the consumer recovery fund.

I. If, at any time, the money deposited in the consumer recovery fund is insufficient to satisfy any duly authorized claim or portion of a claim, the board shall, when sufficient money has been deposited in the consumer recovery fund, satisfy such unpaid claims or portions of claims in the order that such claims or portions of claims were originally filed.

J. A consumer pursuant to subsection A or B of this section is barred from commencing an application for payment from the consumer recovery fund later than two years from the date of sale or date of installation, whichever is later.

Sec. 19. Section 41-2191, Arizona Revised Statutes, is amended to read:

41-2191. False statement; classification

A person or his agent who knowingly files with the ~~assistant~~ DEPUTY director any notice, statement or other document required under section ~~41-2188,~~ 41-2189 or 41-2190 which is false or untrue or contains any material misstatement of fact is guilty of a class 2 misdemeanor.

Sec. 20. Section 41-2193, Arizona Revised Statutes, is amended to read:

41-2193. Enforcement powers of deputy director and office personnel; civil and administrative penalties

A. The ~~assistant~~ DEPUTY director, personnel of the office and personnel under contract to the office, upon presentation of credentials, shall be permitted to enter and inspect premises where units regulated by this chapter are manufactured, sold or installed as the ~~assistant~~ DEPUTY director may deem appropriate to determine if any person has violated ~~the provisions of~~ this chapter. No person licensed by the office may refuse to admit the ~~assistant~~ DEPUTY director or the personnel of the office or personnel under contract if the proper credentials are presented and the inspection is made at a reasonable time.

B. If the ~~assistant~~ DEPUTY director has reasonable cause to believe a unit is being offered for sale by a party required to be licensed but not licensed as a dealer or broker by the office or is in violation of ~~any provision of~~ this chapter, or the rules, regulations or standards promulgated pursuant to this chapter, the office shall serve upon the manufacturer, dealer, broker or installer a notice of violation which may be affixed to the unit in violation and, if affixed to the unit, shall not be removed by anyone without the authorization of the office.

C. If there is reasonable cause to believe, from information furnished to the ~~assistant~~ DEPUTY director or from an investigation instituted by the ~~assistant~~ DEPUTY director, that any person is engaged in a business regulated by this article without being licensed as required by law, the ~~assistant~~ DEPUTY director shall issue and serve upon the person, by certified mail, a cease and desist order requiring the person immediately, upon receipt of the

notice, to cease and desist from engaging in such business. Upon failure of such person to comply with the order, the ~~assistant~~ DEPUTY director shall file an action in the superior court in Maricopa county restraining and enjoining the person from engaging in such business. The court in the action shall proceed as in other actions for injunctions.

D. If in the judgment of the ~~assistant~~ DEPUTY director any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of ~~any provision of~~ this chapter, the rules, regulations or standards promulgated pursuant to this chapter or an order issued pursuant to this chapter, the DEPUTY director may make application to the appropriate court for an order enjoining such acts or practices. Upon a showing by the ~~assistant~~ DEPUTY director that such person has engaged in, or is about to engage in, any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond. On a showing by the ~~assistant~~ DEPUTY director that a licensee has wrongfully withdrawn, or is about to wrongfully withdraw, funds required to be held in the licensee's trust account, an injunction, restraining order or such other order as may be appropriate to prevent a licensee from wrongfully withdrawing trust account funds shall be granted by the court. Upon granting a permanent injunction, the court may impose a civil penalty not exceeding one thousand dollars for each violation.

E. In any investigation, proceeding or hearing which the ~~assistant~~ DEPUTY director may institute, conduct or hold under this article, the ~~assistant~~ DEPUTY director, or a representative designated by the ~~assistant~~ DEPUTY director, may administer oaths, certify to official acts, issue subpoenas for attendance of witnesses and production of books, papers and records and exercise the same powers in this regard as conferred upon public officers by the provisions of section 12-2212.

F. After any hearing which the ~~assistant~~ DEPUTY director may institute, conduct or hold under this article, the ~~assistant~~ DEPUTY director or a representative designated by the ~~assistant~~ DEPUTY director may impose an administrative penalty in an amount of not to exceed one thousand dollars for each violation. All monies collected pursuant to this subsection shall be deposited in the general fund.

G. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, the office may order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected. A person shall not occupy or use a mobile home in violation of an order to vacate.

H. If construction, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, the office may order the work stopped. The order to stop work shall be served on

the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.

Sec. 21. Section 41-2195, Arizona Revised Statutes, is amended to read:

41-2195. Violation; classification; penalty

A. No person required to be licensed pursuant to this article may sell or offer to sell in this state any manufactured home, factory-built building or subassembly unless the proper state insignia or HUD label is affixed to such unit.

B. No person required to be licensed pursuant to this article may manufacture for delivery, sell or offer to sell in this state any manufactured home, factory-built building or subassembly unless the unit and its components, systems and appliances have been constructed and assembled in accordance with the standards and rules adopted pursuant to this chapter.

C. A person shall not occupy or otherwise use a mobile home which has been brought into this state or move a mobile home from one mobile home park in this state to another mobile home park in this state unless it meets the standards adopted pursuant to this chapter and displays the proper state insignia. A mobile home that is rehabilitated in accordance with rehabilitation rules adopted by the department and receives an insignia of approval shall be deemed by a county or municipality to be acceptable for relocation into an existing mobile home park. This subsection does not apply to a person bringing a mobile home into this state as a tourist.

D. A person shall not advertise or offer for sale a mobile home which has been brought into this state unless it meets the standards adopted pursuant to this chapter and displays the proper state insignia.

E. No person may remove or cause to be removed an insignia of approval or a notice of violation without prior authorization of the office.

F. A person shall not occupy or use a mobile home in violation of an order to vacate issued pursuant to section 41-2153, subsection B, paragraph 6.

G. Except as provided in subsections I and J of this section, a person who violates ~~any provision of~~ this chapter, or any such rule or standard, is guilty of a class 2 misdemeanor.

H. The ~~assistant~~ DEPUTY director, after notice and a hearing pursuant to section 41-2181, subsection A, may deny the issuance of a license or revoke or suspend the license of, impose an administrative penalty on or place on probation any manufacturer, dealer, broker, salesperson or installer who has violated ~~any provision of~~ this chapter or any standards and rules adopted pursuant to this chapter.

I. Any manufacturer, dealer, broker, salesperson or installer who knowingly violates ~~any provision of~~ this chapter or the rules adopted pursuant to section 41-2144, subsection A, paragraph 1, 2, 9 or 10 or any person who knowingly provides false information to seek reimbursement of

expenses under section 41-2157 is guilty of a class 1 misdemeanor. Each violation of this chapter shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by this chapter, except that the maximum fine may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

J. An individual or a director, officer or agent of a corporation who knowingly violates this chapter or the rules adopted pursuant to this chapter in a manner which threatens the health or safety of any purchaser is guilty of a class 1 misdemeanor.

K. A manufacturer, dealer, salesperson or broker shall not knowingly sell a unit regulated by this chapter to an unlicensed person for the purpose of resale, nor shall a dealer offer for sale or sell a new unit manufactured by an unlicensed person.

L. In addition to any other obligations imposed by law or contract during the term of a listing agreement, a licensee who has agreed to act as an agent to offer a manufactured home for sale shall promptly submit all offers to purchase the listed unit from any source to the client. The offers shall be in writing and signed and dated by the party making the offer and the client on receipt. A copy of the executed document shall be maintained as part of the record of sales.

M. No licensee, owner or other persons may manufacture, alter, reconstruct or install units regulated by this chapter, unless it is accomplished in a workmanlike manner in accordance with the rules adopted pursuant to this chapter and is suitable for the intended purpose.

Sec. 22. Section 41-2196, Arizona Revised Statutes, is amended to read:

41-2196. <u>State fire marshal cease and desist order; enforcement procedures; violation; civil penalty</u>

A. If the state fire marshal or his deputies have reasonable cause to believe that any person has committed or is committing a violation of ~~any provision of~~ article 3 of this chapter, any rule adopted pursuant to article 3 of this chapter or any order issued pursuant to article 3 of this chapter, which does not constitute an immediate and apparent hazard to life or property, the state fire marshal through the ~~assistant~~ DEPUTY director may issue and serve upon the person by certified mail a cease and desist order.

B. If the violation does not constitute an immediate hazard to life or property, the state fire marshal shall grant to the person whom he alleges to be in violation of any ~~provision,~~ rule or order a reasonable period of time, which in no event shall be less than five days from the date of receipt of the notice, to comply with the order.

C. Upon the failure or refusal of a person to comply with a cease and desist order issued by the ~~assistant~~ DEPUTY director pursuant to subsection A, the ~~assistant~~ DEPUTY director may file an action in the superior court in the county in which the violation is alleged to have occurred to enjoin the

person from engaging in further acts in violation of the cease and desist order. The court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.

D. If the state fire marshal or ~~his~~ THE FIRE MARSHAL'S deputies have reasonable cause to believe that any person has committed or is committing a violation of ~~any provision of~~ article 3 of this chapter, any rule adopted pursuant to article 3 of this chapter or any order issued pursuant to article 3 of this chapter which constitutes an immediate and apparent hazard to life or property, the state fire marshal through the ~~assistant~~ DEPUTY director may either:

1. Issue and serve by personal service a cease and desist order, which order may require immediate compliance. Upon failure of a person to comply with a cease and desist order issued pursuant to this paragraph, the ~~assistant~~ DEPUTY director shall file an action in the superior court in the county where the violation occurred to enjoin the person from engaging in further acts in violation of the cease and desist order.

2. File an action in the superior court in the county in which the violation is alleged to have occurred to enjoin a person from engaging in further acts in violation of the ~~provision,~~ rule or order without issuing a cease and desist order.

The court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.

Sec. 23. Retention of existing employees

Any person whose job description has been eliminated by this act is entitled to remain with the department of fire, building and life safety at the person's current salary, except that the director of the department may terminate such a person for cause. The director of the department shall prescribe those duties of the person as the director deems appropriate.

APPROVED BY THE GOVERNOR APRIL 17, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2006.