

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 2/19/87

HOUSE BILL 1585

By: Rep. Mitchum

"AN ACT TO PROVIDE THAT CONSUMER COMPLAINTS BE HEARD BY THE ARKANSAS MANUFACTURED HOME COMMISSION, TO ESTABLISH A FUND TO PAY CLAIMS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This Act shall be known as "The Arkansas Manufactured Home Recovery Act."

SECTION 2. As used herein, "Commission" means the Arkansas Manufactured Home Commission as authorized in Act 419 of 1977, as amended.

SECTION 3. (A) (1) The Commission shall by regulation set annual assessments of manufacturers of manufactured homes in this state and manufacturers of manufactured homes in other states selling the same in this state, for installers and dealers. The Commission shall initially collect the following assessment fees beginning July 1, 1987, and on each July 1 thereafter if the balance of the Manufactured Housing Recovery Fund falls below \$250,000, the Commission shall determine and collect such assessment as may be necessary to restore the fund to \$250,000.

|              |                       |
|--------------|-----------------------|
| Installer    | \$ 500.00             |
| Dealer       | 1,000.00 per location |
| Manufacturer | 3,000.00 per location |

(2) Any participant shall receive a refund of its initial assessment after a two (2) year waiting period after it ceases operation of its business in this State provided there are no claims pending against such participant. No interest will accrue to the benefit of such participant.

(B) (1) All consumer, licensee, installer, dealer or manufacturer complaints shall be filed with the Commission. The Commission shall determine

by hearing or whatever procedure it establishes first if any standard adopted by the Commission has been violated and, if so, the amount of damages, if any suffered by the aggrieved party or parties.

(2) The amount of damages awarded by the Commission shall be limited to actual, compensatory damages and shall not include attorneys' fees. On appeal to Circuit Court from an award of the Commission, the jurisdiction of the Circuit Court shall be limited to actual, compensatory damages. The Circuit Court shall not have jurisdiction to award punitive or exemplary damages for claims covered by the provisions of this Act, attorneys' fees or court costs.

(3) Upon a finding by the Commission that a standard has been violated, the Commission shall direct the respondent licensee, dealer, installer or manufacturer to pay the awarded amount to the complainant. If such amount is not paid within thirty (30) days following the written decision of the Commission and no appeal has been filed in Circuit Court of the decision, the Commission shall, upon request, pay from the Manufactured Housing Recovery Fund the amount of the award to the complainant if:

- (a) the amount is not in excess of \$10,000 for any one violation of the respondent licensee, installer, dealer or manufacturer;
- (b) the fund balance is sufficient to pay the award;
- (c) the complainant has assigned to the Commission all rights and claims that they have against the respondent; and
- (d) the complainant agrees to subrogate the Commission to all rights of the complainant to the extent of the payment.

(4) The question of what constitutes a continuing series of violations shall be a matter solely within the discretion and judgment of the Commission.

(5) Nothing herein shall obligate the fund for any amount in excess of \$12,500 per installer, \$25,000 per dealership or \$75,000 per manufacturer with respect to the actions of any one licensee, installer, dealer or manufacturer.

(C) (1) Appeals from a decision of the Commission shall be to the Circuit Court in accordance with the Arkansas Administrative Procedure Act. Such

appeal shall stay that portion of the Commission order which directs payment of the damages. Neither the respondent nor the Commission shall be required to pay damages to the complainant until such time as a final order of the Circuit Court, Court of Appeals or Supreme Court is issued.

(2) On appeal, the Circuit Court jurisdiction in awarding damages to be paid from the fund shall be limited in amount to (a) the amount determined by the Commission, or (b) the limits set forth herein. The Court shall not award attorneys' fees or court costs to be paid by the fund.

(D) (1) The Commission shall suspend the license or certificate of each licensee, installer, dealership or factory until such time as same reimburses award amounts paid on its behalf to the fund plus interest at a rate to be determined by the Commission but not to exceed ten percent (10%) per annum.

(2) The Commission may permanently suspend the license or certificate of the respondent upon failure to pay an order of the Commission or court.

(3) The Commission may move the Circuit Court to suspend the license or certificate of the respondent during pendency of an appeal from a Commission order.

(E) The Commission shall have the power to suspend, revoke or refuse to renew the license or certification under this Act of any person who is found to have been guilty of:

(1) Fraud, misrepresentation or deception in obtaining a license or certification.

(2) Accepting a manufactured home, directly or indirectly, from a manufacturer not certified by the State pursuant to this Act.

(3) Selling or delivering, directly or indirectly, a manufactured home to a dealer not certified by the State pursuant to this Act.

(4) Violating any provision of this Act or rules or regulations promulgated thereunder.

(F) (1) In lieu of suspension, revocation or refusal to renew a license certification, the Commission shall have the authority to impose a monetary penalty and may suspend, refuse to renew, or revoke said license or certification until said penalty is paid to the Commission. Said penalty shall be imposed only if the Commission formally finds that the public welfare would not be impaired by the imposition of a monetary penalty rather than suspension, refusal to renew, or a revocation and payment of same should achieve the

desired disciplinary purpose.

(2) No monetary penalty imposed by the Commission shall exceed \$1,000.00 per violation; each separate transaction shall constitute as separate violation.

(3) The Commission shall not impose a civil penalty upon any person whose license or certification is suspended, revoked or not renewed under this Section.

(G) The Commission shall have the power to file suit in the Circuit Court of Pulaski County to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service of the order assessing the monetary penalty, unless a court enters a stay pursuant to the provisions of this Section.

(H) All hearings and appeals under this Section shall be pursuant to Act 434 of 1967, as amended.

(I) Nothing herein shall be construed to limit or restrict in any manner other civil or criminal remedies available under other laws to any person.

SECTION 4. (1) All assessment fees collected under this Act shall be deposited in the State Treasury and the State Treasurer shall credit the amount paid into a special revenue fund to be designated the "Manufactured Home Recovery Fund" from which appropriations may be utilized by the Commission in accordance with the express purpose as set forth in Section 3 hereof.

(2) Each manufacturer, dealer and installer operating in the State of Arkansas shall be required to pay the initial assessment fee to the Manufactured Housing Recovery Fund. The annual assessment fees shall continue to be assessed until the assets of the Manufactured Housing Recovery Fund reach \$250,000.00 and may be restored at any time thereafter upon a determination by the Commission that annual assessments are necessary to maintain the integrity of the fund balance.

(3) The assets of the fund may be invested and reinvested as the Commission may determine with the advice of the State Board of Finance.

(4) Interest revenues derived from the fund shall be used to maintain the fund.

SECTION 5. All laws and parts of laws in conflict with this Act are

hereby repealed.

SECTION 6. Severability. The various provisions, sections, subsections and paragraphs of this Act are hereby declared severable and if any section or part of a section, provision or part of a provision, herein is declared unconstitutional, inappropriate or invalid by any court of competent jurisdiction, such holding shall not invalidate or affect the remainder of this Act.

/s/ Tommy Mitchum

