

# HOUSE BILL No. 5836

May 29, 1990, Introduced by Rep. Saunders and referred to the Committee on Urban Affairs.

A bill to amend section 22 of Act No. 96 of the Public Acts of 1987, entitled

"The mobile home commission act,"

being section 125.2322 of the Michigan Compiled Laws; and to add sections 24a, 24c, 24d, 24e, 24f, 24g, 24h, and 24i.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 22 of Act No. 96 of the Public Acts of  
2 1987, being section 125.2322 of the Michigan Compiled Laws, is  
3 amended and sections 24a, 24c, 24d, 24e, 24f, 24g, 24h, and 24i  
4 are added to read as follows:

5       Sec. 22. The commission may promulgate rules to require a  
6 licensed mobile home dealer to post a surety bond in an amount up  
7 to \$10,000.00 for ~~each~~ THE FIRST OF EVERY 3 sales ~~location~~  
8 ~~and~~ LOCATIONS. THE COMMISSION may determine conditions of the  
9 bond. An appropriate deposit of cash, LETTERS OF CREDIT, or

1 OTHER securities ~~shall~~ MAY be accepted in lieu of a bond  
2 ~~which~~ THAT is required.

3 SEC. 24A. THE MOBILE HOME RECOVERY FUND IS CREATED IN THE  
4 DEPARTMENT OF TREASURY. THE RECOVERY FUND SHALL BE ADMINISTERED  
5 BY THE DEPARTMENT AS PROVIDED IN THIS ACT. ALL MONEY REMAINING  
6 IN THE RECOVERY FUND AT THE END OF A FISCAL YEAR, INCLUDING  
7 INTEREST EARNED BY THE RECOVERY FUND, SHALL BE CARRIED OVER IN  
8 THE FUND TO THE NEXT AND SUCCEEDING FISCAL YEARS AND SHALL NOT BE  
9 CREDITED TO OR REVERT TO THE GENERAL FUND. ALL COSTS ASSOCIATED  
10 WITH ADMINISTRATION OF THE RECOVERY FUND SHALL BE PAID FROM THE  
11 FUND.

12 SEC. 24C. (1) A PURCHASER WHO OBTAINS A FINAL JUDGMENT IN A  
13 COURT OF RECORD AGAINST A MANUFACTURED HOME MANUFACTURER OR AN  
14 INSTALLER AND REPAIRER OR MANUFACTURED HOME DEALER LICENSED UNDER  
15 THIS ACT FOR A FAILURE TO HONOR WARRANTIES OR GUARANTEES, OR FOR  
16 FRAUD, WILLFUL MISREPRESENTATION, OR A VIOLATION OF THIS ACT OR  
17 RULES PROMULGATED UNDER THIS ACT, MAY APPLY TO THE COURT IN WHICH  
18 THE JUDGMENT WAS ENTERED FOR AN ORDER DIRECTING PAYMENT FROM THE  
19 RECOVERY FUND PURSUANT TO SECTION 24D IF ALL OF THE FOLLOWING ARE  
20 MET:

21 (A) THE MANUFACTURED HOME WAS PURCHASED FOR PERSONAL OR  
22 FAMILY RESIDENTIAL PURPOSES.

23 (B) THE JUDGMENT WAS ENTERED IN A CIVIL ACTION BASED ON A  
24 TRANSACTION THAT OCCURRED AT LEAST 6 MONTHS AFTER THE EFFECTIVE  
25 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

1 (C) THE CIVIL ACTION IN WHICH THE JUDGMENT WAS ENTERED WAS  
2 BROUGHT WITHIN 1 YEAR AFTER THE TRANSACTION ON WHICH THE ACTION  
3 WAS BASED.

4 (D) NOTICE OF THE ACTION WAS GIVEN TO THE DEPARTMENT BY  
5 SERVICE OF A COPY OF THE COMPLAINT WITHIN 30 DAYS AFTER COMMENCE-  
6 MENT OF THE ACTION.

7 (E) THE APPLICATION UNDER THIS SECTION IS FILED AFTER THE  
8 TIME FOR APPEAL HAS EXPIRED AND NO MORE THAN 1 YEAR AFTER THE  
9 TERMINATION OF ALL PROCEEDINGS IN THE CIVIL ACTION IN WHICH THE  
10 JUDGMENT WAS ENTERED.

11 (F) THE JUDGMENT DEBTOR HAS REFUSED TO PAY ALL OR PART OF  
12 THE JUDGMENT.

13 (G) ALL REASONABLY AVAILABLE LEGAL REMEDIES, INCLUDING ALL  
14 POSTJUDGMENT REMEDIES, HAVE BEEN PURSUED AND THE JUDGMENT REMAINS  
15 UNPAID.

16 (H) THE CLAIMANT IS NOT A SPOUSE OF THE JUDGMENT DEBTOR OR A  
17 PERSON REPRESENTING THE SPOUSE.

18 (I) THE JUDGMENT IS NOT ON A BOND ISSUED BEFORE THE EFFEC-  
19 TIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

20 (2) IF THE JUDGMENT IS AGAINST A MANUFACTURER OF MANUFAC-  
21 TURED HOMES, THE PURCHASER MAY ASSIGN HIS OR HER CLAIM TO A  
22 LICENSED PERSON WHO PERFORMS THE WARRANTY WORK.

23 SEC. 24D. (1) UPON RECEIPT OF AN APPLICATION FILED PURSUANT  
24 TO SECTION 24C, VERIFICATION THAT ALL OF THE REQUIREMENTS OF SEC-  
25 TION 24C(1)(A) TO (I) HAVE BEEN MET, AND A HEARING AT WHICH THE  
26 DEPARTMENT IS REPRESENTED, THE COURT SHALL ORDER PAYMENT FROM THE  
27 RECOVERY FUND. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3),

1 THE ORDER SHALL DIRECT THE DEPARTMENT TO ISSUE A WARRANT IN THE  
2 AMOUNT OF THE ACTUAL AND DIRECT LOSS SUFFERED BY THE PURCHASER,  
3 PLUS COURT COSTS AND REASONABLE ATTORNEY FEES OF NO MORE THAN 15%  
4 OF THE AMOUNT OF THE JUDGMENT THAT REMAINS UNPAID.

5 (2) UPON REQUEST OF THE DEPARTMENT, THE COURT MAY REQUIRE  
6 ALL CLAIMANTS AND PROSPECTIVE CLAIMANTS AGAINST A SINGLE LICENSEE  
7 OR MANUFACTURER TO BE JOINED IN 1 APPLICATION SO THAT ALL CLAIMS  
8 MAY BE DETERMINED AND SETTLED EQUITABLY. IF THE RECOVERY FUND  
9 HAS INSUFFICIENT FUNDS TO PAY THE UNPAID PORTION OF EACH JUDGMENT  
10 IN FULL, OR IF THE TOTAL AMOUNT OF THE COMBINED UNPAID JUDGMENTS  
11 EXCEEDS THE LIMITATION PRESCRIBED BY SUBSECTION (3), THE COURT  
12 MAY ORDER THAT PAYMENT FROM THE RECOVERY FUND BE DISTRIBUTED  
13 AMONG THE CLAIMANTS IN THE SAME RATIO AS THEIR RESPECTIVE CLAIMS  
14 BEAR TO THE TOTAL AMOUNT OF CLAIMS OR THAT PAYMENTS BE DISTRIB-  
15 UTED IN SOME OTHER EQUITABLE MANNER.

16 (3) AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE FOR AN  
17 AMOUNT OF NOT MORE THAN \$25,000.00 FOR AN INDIVIDUAL CLAIM OR NOT  
18 MORE THAN \$100,000.00 FOR A GROUP OF CLAIMS AGAINST A SINGLE MAN-  
19 UFACTURER, INSTALLER AND REPAIRER, OR MANUFACTURED HOME DEALER.

20 SEC. 24E. (1) A PURCHASER WHO COMMENCES A CIVIL ACTION  
21 DESCRIBED IN SECTION 24C SHALL SERVE A COPY OF THE COMPLAINT ON  
22 THE DEPARTMENT WITHIN 30 DAYS AFTER COMMENCING THE ACTION.

23 (2) THE DEPARTMENT MAY INTERVENE IN A CIVIL ACTION DESCRIBED  
24 IN SECTION 24C.

25 (3) THE DEPARTMENT MAY COMPROMISE A CLAIM IN A CIVIL ACTION  
26 DESCRIBED IN SECTION 24C. THE DEPARTMENT IS NOT BOUND BY A PRIOR  
27 COMPROMISE OF THE JUDGMENT DEBTOR.

1        SEC. 24F. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE  
2 DEPARTMENT SHALL PAY CLAIMS AGAINST THE RECOVERY FUND IN THE  
3 ORDER IN WHICH THE DEPARTMENT RECEIVES THE ORDERS DIRECTING PAY-  
4 MENT, WITHOUT REGARD TO THE ORDER IN WHICH THE CIVIL ACTIONS WERE  
5 COMMENCED, JUDGMENTS ENTERED, OR APPLICATIONS FILED UNDER SECTION  
6 24C.

7        (2) IF THE AMOUNT OF MONEY IN THE FUND AT A PARTICULAR TIME  
8 IS INSUFFICIENT TO SATISFY AN ORDER FOR PAYMENT ISSUED PURSUANT  
9 TO SECTION 24D, THE DEPARTMENT SHALL DISTRIBUTE THE FUNDS AVAIL-  
10 ABLE TO THE CLAIMANT. IF THE ORDER IS FOR COMBINED CLAIMS, THE  
11 DEPARTMENT SHALL DISTRIBUTE THE FUNDS ACCORDING TO THE TERMS OF  
12 THE ORDER OR ON A PRO RATA BASIS. WHEN SUFFICIENT MONEY HAS BEEN  
13 DEPOSITED IN THE FUND, THE DEPARTMENT SHALL SATISFY THE UNPAID  
14 CLAIMS OR PORTIONS OF CLAIMS IN THE ORDER THAT THE ORDERS DIRECT-  
15 ING PAYMENT WERE RECEIVED BY THE DEPARTMENT.

16       SEC. 24G. (1) A MANUFACTURED HOME DEALER OR INSTALLER AND  
17 REPAIRER WHO RECEIVES OR RENEWS A LICENSE BEFORE THE EFFECTIVE  
18 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND UPON WHOM  
19 SERVICE CANNOT BE MADE WITH REASONABLE DILIGENCE SHALL BE CONSID-  
20 ERED TO HAVE APPOINTED THE COMMISSION AS ITS ATTORNEY IN FACT  
21 UPON WHOM SERVICE OF PROCESS MAY BE MADE IN CIVIL ACTIONS  
22 DESCRIBED IN SECTION 24C.

23       (2) A MANUFACTURED HOME DEALER OR INSTALLER AND REPAIRER WHO  
24 RECEIVES OR RENEWS A LICENSE AFTER THE EFFECTIVE DATE OF THE  
25 AMENDATORY ACT THAT ADDED THIS SECTION SHALL SIGN AN IRREVOCABLE  
26 CONSENT WITH THE COMMISSION APPOINTING THE COMMISSION AS ITS  
27 ATTORNEY IN FACT UPON WHOM SERVICE OF PROCESS MAY BE MADE IN A

1 CIVIL ACTION DESCRIBED IN SECTION 24C. THE CONSENT SHALL CONTAIN  
2 THE ACKNOWLEDGED SIGNATURE OF AN OFFICER, OWNER, OR PARTNER OF  
3 THE LICENSEE.

4 SEC. 24H. (1) IF THE DEPARTMENT PAYS AN AMOUNT FROM THE  
5 RECOVERY FUND PURSUANT TO SECTION 24D TO SATISFY A JUDGMENT  
6 AGAINST A MANUFACTURED HOME DEALER OR INSTALLER AND REPAIRER, OR  
7 IN SETTLEMENT OF A CAUSE OF ACTION DESCRIBED IN SECTION 24C, THE  
8 DEPARTMENT SHALL SUSPEND THE LICENSE OF THE MANUFACTURED HOME  
9 DEALER OR INSTALLER AND REPAIRER ON THE EFFECTIVE DATE OF THE  
10 ORDER OR SETTLEMENT. THE DEPARTMENT SHALL NOT REINSTATE THE  
11 LICENSE UNTIL THE LICENSEE HAS REPAID IN FULL, INCLUDING INTEREST  
12 AT THE RATE OF 12% PER ANNUM, THE AMOUNT PAID BY THE RECOVERY  
13 FUND.

14 (2) IF THE DEPARTMENT PAYS AN AMOUNT FROM THE RECOVERY FUND  
15 PURSUANT TO SECTION 24D TO SATISFY A JUDGMENT AGAINST A MANUFAC-  
16 Turer OF MANUFACTURED HOMES, THE MANUFACTURER SHALL NOT SELL A  
17 MANUFACTURED HOME IN THIS STATE UNTIL IT HAS REPAID IN FULL,  
18 INCLUDING INTEREST AT THE RATE OF 12% PER ANNUM, THE AMOUNT PAID  
19 BY THE RECOVERY FUND.

20 (3) THIS SECTION DOES NOT PREVENT THE DEPARTMENT FROM TAKING  
21 DISCIPLINARY ACTION AGAINST A LICENSEE OR A MANUFACTURER FOR A  
22 VIOLATION OF THIS ACT OR RULES PROMULGATED UNDER THIS ACT. THE  
23 REPAYMENT BY A LICENSEE OF AN OBLIGATION TO THE RECOVERY FUND  
24 DOES NOT NULLIFY OR MODIFY THE EFFECT OF ANOTHER DISCIPLINARY  
25 PROCEEDING BROUGHT UNDER THIS ACT OR RULES PROMULGATED PURSUANT  
26 TO THIS ACT.

1        SEC. 241. (1) A PERSON WHO VIOLATES SECTION 610 OF PUBLIC  
2 LAW 93-383, 42 U.S.C. 5409, OR A REGULATION OR ORDER ISSUED UNDER  
3 IT, IS LIABLE FOR A CIVIL FINE OF NOT MORE THAN \$1,000.00, RECOV-  
4 ERABLE AS PROVIDED IN SUBSECTION (3). EACH VIOLATION OF SECTION  
5 610 OF PUBLIC LAW 93-383 OR A REGULATION OR ORDER ISSUED UNDER IT  
6 IS A SEPARATE VIOLATION WITH RESPECT TO EACH MANUFACTURED HOME OR  
7 WITH RESPECT TO EACH FAILURE OR REFUSAL TO ALLOW OR PERFORM AN  
8 ACT REQUIRED BY THE FEDERAL STATUTE, REGULATION, OR ORDER. A  
9 CIVIL FINE UNDER THIS SECTION SHALL NOT EXCEED \$1,000,000.00 FOR  
10 A RELATED SERIES OF VIOLATIONS OCCURRING WITHIN 1 YEAR AFTER THE  
11 DATE OF THE FIRST VIOLATION IN THE SERIES.

12        (2) AN INDIVIDUAL, OR A DIRECTOR, OFFICER, OR AGENT OF A  
13 CORPORATION WHO WITHIN THIS STATE KNOWINGLY AND WILLFULLY VIO-  
14 LATES SECTION 610 OF PUBLIC LAW 93-383 IN A MANNER THAT THREATENS  
15 THE HEALTH OR SAFETY OF A PURCHASER IS GUILTY OF A MISDEMEANOR,  
16 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF  
17 NOT MORE THAN \$1,000.00, OR BOTH.

18        (3) A DEFAULT IN THE PAYMENT OF A CIVIL FINE ORDERED UNDER  
19 THIS SECTION OR AN INSTALLMENT OF THE FINE MAY BE REMEDIED BY ANY  
20 MEANS AUTHORIZED UNDER THE REVISED JUDICATURE ACT OF 1961, ACT  
21 NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTIONS 600.101 TO  
22 600.9947 OF THE MICHIGAN COMPILED LAWS.

23        (4) THE DEPARTMENT MAY ENTER INTO AN AGREEMENT WITH THE FED-  
24 ERAL GOVERNMENT TO COMPENSATE THIS STATE FOR THE COST OF ENFORC-  
25 ING THIS SECTION.

1       Section 2. This amendatory act shall not take effect unless  
2 all of the following bills of the 85th Legislature are enacted  
3 into law:

4       (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5835  
5 (request no. 05415'90).

6       (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5834  
7 (request no. 05416'90).