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BILL ANALYSIS



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Senate Bill 158
Sponsor: Senator Dale L. Shugars
Committee: Local, Urban, and State Affairs

Date Completed: 5-16-95

SUMMARY OF SENATE BILL 158 as introduced 1-31-95:

The bill would create the “Manufactured Housing Recovery Fund Act” to provide for the establishment of a Manufactured Housing Fund, which would be capitalized at \$2 million and funded by a \$15 transaction fee paid at the time a purchaser applied to the Department of Commerce for a certificate of title to a manufactured home.

A purchaser who obtained a final judgment against a manufacturer, installer, repairer or dealer of a manufactured home, as well as a dealer or installer and repairer who obtained a final judgment against a manufacturer, for failure to honor warranties or other contractual obligations, fraud, or violations of the Mobile Home Commission Act could apply to the court for an order directing payment from the Fund, if the bill’s requirements were met. A court could order the Department to pay up to \$25,000 for an individual claim and up to \$100,000 for a group of claims.

If the Department used the Fund to pay a judgment against a dealer or installer and repairer, the Mobile Home Commission would have to suspend that person’s license. A license could not be reinstated until a dealer or installer and repairer paid the amount in full plus interest at 12% a year. If the Department used the Fund to pay a judgment against a manufactured home manufacturer, the manufacturer could not sell a home in the State until the Fund was repaid in full plus interest at 12% a year. The bill specifies that the Department could take additional disciplinary measures for violation of the Mobile Home Commission Act.

Recovery Fund

The Manufactured Housing Recovery Fund would be created in the Department of Treasury and administered by the Department of Commerce. All money remaining in the Fund at the end of a fiscal year, including interest earned by the Fund, would have to be carried over in the Fund to the next and succeeding fiscal years and could not lapse to the General Fund.

The Fund would be capitalized at \$2 million and would have to be funded by fees collected pursuant to the bill. A claim could not be paid from the Fund until it contained at least \$500,000.

Except as otherwise provided, at the time the purchaser of a manufactured home that was subject to the certificate of title provisions of the Mobile Home Commission Act applied to the Commerce Department for a certificate of title, the Department would have to collect from the purchaser a \$15 transaction fee, in addition to the \$45 title fee required by that Act, and would have to deposit the

fee in the Fund. After the Fund's balance reached \$2 million, the Department would have to stop collecting the \$15 transaction fee. If the Fund's balance dropped below \$500,000, the Department again would have to collect the \$15 transaction fee until the balance reached \$2 million.

Fund Payment

A purchaser who obtained in court a final judgment against a manufactured home manufacturer or against a manufactured home installer and repairer or dealer licensed under the Mobile Home Commission Act for a failure to honor warranties or contractual obligations, or for fraud, willful misrepresentation, or a violation of the Mobile Home Commission Act or rules promulgated under the Act, could apply to the court in which the judgment was entered for an order directing payment from the Fund if the purchaser met the bill's requirements.

A licensed manufactured home dealer or installer and repairer who obtained in court a final judgment against a manufactured home manufacturer for a failure to honor warranties or contractual obligations, or for failure to pay the dealer or installer and repairer for warranty work performed for or on behalf of the manufacturer, or for fraud, willful misrepresentation, or a violation of the Act or rules promulgated under it, could apply to the court in which the judgment was entered for an order directing payment from the Fund, if the dealer or installer and repairer met the following requirements.

A purchaser or a manufactured home dealer or installer and repairer would be eligible for payment from the Fund if the following were met:

- The manufactured home that was the subject of the lawsuit had been purchased for personal or family residential purposes.
- The judgment had been entered in a civil action based on a transaction that occurred at least six months after the bill's effective date.
- The civil action was brought within one year after the transaction on which the action was based.
- The Department received a copy of the application filed with the court as a notice of the application.
- The application was filed after the time for appeal of the judgment had expired and within one year after all proceedings in the civil action in which the judgment was entered had terminated.
- The judgment debtor had failed to pay all or part of the judgment.
- All reasonably available legal remedies, including all postjudgment remedies, had been pursued and the judgment remained unpaid.
- The claimant was not a spouse of the judgment debtor or a person representing the spouse of the debtor.

Order of Payment

Upon receiving an application, verification that all of the above requirements had been met, and a hearing at which the Department was represented, the court would have to order payment from the Fund. Except as otherwise provided, the order would have to direct the Department to issue a payment warrant in the amount of the actual and direct loss suffered by the claimant, plus court costs and reasonable attorney fees in an amount of not more than 15% of the amount of the judgment that remained unpaid.

Upon the Department's request, the court could require all claimants against a single manufactured home manufacturer, dealer, or installer and repairer to be joined in one application so that all claims could be determined and settled equitably. If the Fund did not have enough funds to pay the unpaid portion of each judgment in full, or if the total amount of the combined unpaid judgments exceeded the bill's payment limitations, the court could order that payment from the Fund be distributed among the claimants in the same ratio as their respective claims bore to the total amount of claims against the manufacturer, dealer, or installer and repairer or that payments be distributed in some other equitable manner.

An order could be for an amount of up to \$25,000 for an individual claim or up to \$100,000 for a group of claims against a single manufactured home manufacturer, dealer, installer and repairer in a 12-month period. Payment of a claim could not be made unless the bill's requirements on the Fund's capitalization were met.

The Department would have to pay claims against the Fund in the order in which the Department received the orders directing payment, without regard to the order in which the civil actions were begun, judgments entered, or applications filed under the bill.

If the amount of money in the Fund at a particular time were insufficient to satisfy an order for payment, the Department would have to distribute the available money to the claimant. If the order were for combined claims, the Department would have to distribute the available money according to the terms of the order or, if it did not address the issue of distribution, on a pro rata basis. If sufficient money were subsequently deposited in the Fund, the Department would have to satisfy the unpaid claims or portions of claims in the order that it received the orders directing payment.

Service of Process

A manufactured home dealer or installer and repairer who received or renewed a license under the Mobile Home Commission Act before the bill's effective date and upon whom service could not be made with reasonable diligence would have to be considered to have appointed the Department as its attorney in fact upon whom service of process could be made in civil actions.

A dealer or installer and repairer who received or renewed a license under the Act after the bill's effective date would have to sign an irrevocable consent with the Department appointing the Department as its attorney in fact upon whom service of process could be made in a civil action, if service could not be made with reasonable diligence on the dealer or installer and repairer. The consent would have to contain the acknowledged signature of an officer, owner, or partner of the dealer or installer and repairer.

License Suspension

If the Department paid an amount from the Fund to satisfy a judgment against a dealer or installer and repairer, the Commission would have to suspend that person's license on the effective date of the order or settlement. The Commission could not reinstate the license until the dealer or installer and repairer had repaid in full the amount paid by the Fund plus interest at the rate of 12% per year.

If the Department paid an amount from the Fund to satisfy a judgment against a manufacturer, the manufacturer could not sell a manufactured home in the State until it had repaid in full the amount paid by the Fund plus interest at the rate of 12% per year.

The bill specifies that these provisions would not prevent the Department from taking disciplinary action against a licensee or manufactured home manufacturer for a violation of the Mobile Home Commission Act or rules promulgated under it. The repayment by a licensee of an obligation to the Fund would not nullify or modify the effect of another disciplinary proceeding brought under the Act or rules promulgated under it.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The proposed Manufactured Housing Recovery Fund would receive revenue generated through the \$15 transaction fee authorized in Section 10. The Manufactured Housing Recovery Fund would be available to pay court-ordered judgments for failure to honor warranties or contractual obligations, or for other violations listed in Section 4(2). The \$15 transaction fee would be collected until the Fund balance reached \$2,000,000. The fee would be suspended until the balance of the Fund reached \$500,000. The Department would resume the collection of the fee at that time until the balance of the Fund again reached \$2,000,000.

The bill would have a \$300,000 negative impact on the Department of Commerce. This support would be provided from the General Fund unless the bill included a provision permitting the use of transaction fee revenue for administrative costs. The Mobile Home Division of the Department of Commerce would need to provide 1.5 to 2.0 positions to staff this program, which could require as much as \$100,000. Legal costs related to collection of fee revenue paid by the Fund could exceed \$200,000 per year.

There would be no fiscal impact on local governmental units.

Fiscal Analyst: K. Lindquist

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.