

HB

294

COMMITTEE REPORT

HOUSE

FURTHER:

February 23, 1979

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had HB 294

"An Act relating to mobile homes."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 294 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

[Signature]

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[Signature]

[Signature]

[Signature]

[Signature]

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[Signature]

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

[Signature]

CHAIRMAN

Introduced: 2/23/79
Referred: Judiciary

1 IN THE HOUSE

BY COTTEN

2 HOUSE BILL NO. 294

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mobile homes."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 45.30 is amended by adding a new section to read:

9 Sec. 45.30.011. MOBILE HOME WARRANTIES. (a) After the effective
10 date of this Act, new mobile homes sold by a mobile home dealer to a
11 buyer are subject to a mobile home warranty. A mobile home warranty
12 shall be set out in a separate written document entitled "Mobile Home
13 Warranty" which shall be delivered to the buyer by the mobile home
14 dealer at the time a contract of sale is signed. The warranty shall
15 contain the name, address and telephone number of the mobile home manu-
16 facturer and the mobile home dealer and shall include at least the
17 following provisions:

18 (1) the mobile home is free from any substantial defects in
19 materials and workmanship;

20 (2) the manufacturer or dealer, or both, shall take appro-
21 priate action at the site of the mobile home to correct substantial
22 defects in materials or workmanship which become evident within one year
23 of the date of delivery of the mobile home to the buyer if the buyer, or
24 his transferee, gives written notice of the defect at the business
25 address of the manufacturer or dealer on a date which is not more than
26 one year and ten days after date of delivery of the mobile home;

27 (3) the manufacturer and the dealer are jointly and severally
28 liable to the buyer, or his transferee, for the fulfillment of the terms
29 of warranty, and the buyer may notify the manufacturer or the dealer, or

1 both, in the event action is required to correct substantial defects in
2 materials or workmanship;

3 (4) the warranty is applicable to the mobile home structure,
4 its plumbing, heating and electrical systems, and all ^{furniture,} appliances and
5 other equipment installed or included in the mobile home unit by the
6 manufacturer or dealer; and

7 (5) notwithstanding separate warranties applicable to
8 appliances contained within a mobile home unit issued by the manufac-
9 turers of the appliances, primary responsibility for appropriate
10 corrective action under the warranty rests with the manufacturer and the
11 dealer of the mobile home unit, and written notice of defects must be
12 initially reported to them.

13 (b) The warranty provided under (a) of this section is in addition
14 to and not in derogation of all other rights and remedies which a buyer
15 may have under any other law or instrument.

16 (c) The manufacturer and the dealer may not require the buyer to
17 waive his rights under (a) of this section. A waiver of rights required
18 by a manufacturer or dealer is contrary to public policy and is unen-
19 forceable.

20 (d) A mobile home dealer shall display a notice of reasonable size
21 stating the applicability of the warranty required by this section, and
22 shall, upon request, provide a sample copy of the warranty. The notice
23 shall be posted in each area in which purchase orders and sales con-
24 tracts for mobile homes are written.

25 (e) SEE ATTACHED
* Sec. 2. AS 45.30.030(c) is amended to read:

26 (c) [A MOBILE HOME MANUFACTURER OR OWNER OF A MOBILE HOME MAY MAKE
27 APPLICATION FOR PLAN APPROVAL TO THE DEPARTMENT IN ACCORDANCE WITH THE
28 REGULATIONS ADOPTED UNDER (b) OF THIS SECTION. THE FILING FEE FOR EACH
29 APPLICATION IS \$100 WITH AN ANNUAL RENEWAL FEE OF \$50 AND SHALL BE PAID

1 TO THE DEPARTMENT.] Each manufacturer constructing mobile homes for
2 sale in the state shall deposit a performance bond with the department
3 to assure [CONSTRUCTION] compliance with the provisions of AS 45.30.011
4 [BEFORE PLAN APPROVAL WILL BE GIVEN]. Performance bonds required under
5 this section shall be in the following amounts and based on the number
6 of units shipped into the state during the previous 12 months: (1) one
7 to 50 units, \$20,000; (2) in excess of 50 units, \$50,000 [; (3) NEW
8 MANUFACTURERS OBTAINING PLAN APPROVAL FOR THE FIRST TIME, \$20,000]. A
9 manufacturer who discontinues the shipping of [CONSTRUCTING] mobile
10 homes for sale into [IN] the state shall maintain a performance bond in
11 the required amount for a period of 24 months after the date the last
12 mobile home was brought into the state.

13 * Sec. 3. AS 45.30.040(a) is amended to read:

14 (a) A department inspector shall give written notice to the
15 owner, dealer or manufacturer of a mobile home of each violation of
16 AS 45.30.011 [THE REGULATIONS ADOPTED UNDER SEC. 10 OF THIS CHAPTER].
17 The notice of violation shall accurately describe the violation and give
18 specific reference to the section and paragraph of the statutes
19 [REGULATIONS].

20 * Sec. 4. AS 45.30.040 is amended by adding new subsections to read:

21 (c) The owner of a mobile home ^{or a mobile home dealer} may file an action for forfeiture
22 of the bond to secure recovery for damages caused by the failure of the
23 manufacturer to comply with the provisions of AS 45.30.011.

24 (d) Whenever it finds a violation of the provisions of AS 45.30 by
25 a manufacturer or dealer of mobile homes, the department may issue a
26 cease and desist order. After notice and hearing, the department may
27 continue, modify, or terminate the order. If, after hearing, the
28 department determines that violations of the provisions of AS 45.30 are
29 regular and recurring, it may require forfeiture of the bond to the

1 benefit of the state and arrange for distribution of the proceeds of the
2 bond to the mobile home owners injured by the activities of the dealer
3 or manufacturer *OR TO mobile home dealers injured by the*
4 *activities of the manufacturer.*

* Sec. 5. AS 45.30 is amended by adding a new section to read:

5 Sec. 45.30.061. DEFINITIONS. In AS 45.30,

6 (1) "department" means the Department of ~~Commerce and Econo-~~ *Transportation AND*
7 *Public Facilities;* ~~mic Development;~~

8 (2) "mobile home" means a vehicle designed and equipped for
9 human habitation, and which may be drawn by a motor vehicle only when
10 authorized by permit.

11 * Sec. 6. The following are repealed: AS 45.30.010, 45.30.030(b),
12 45.30.040(b) and 45.30.050.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

(Insert page 2, line 24)

(c) The manufacturer shall provide reasonable compensation to the mobile home dealer who incurs expenses as a result of warranty obligations for which the manufacturer is legally responsible or which the manufacturer imposes upon the dealer. Any ~~contract~~ contractual provision contrary to this subsection is void as against public policy.

Chapter 30. Mobile Homes and Mobile Home Parks.

Section

- 10. Mobile home standards
- 20. [Repealed]
- 30. Administration
- 40. Enforcement of compliance

Section

- 50. Penalty
- 60. [Repealed]
- 70. Certain landlord-vendor agreements prohibited

Effective date of chapter. — Section 3, ch. 80, SLA 1971, provides: "This act takes effect on September 1, 1971."

Editor's note. — Section 1, ch. 80, SLA 1971, effective September 1, 1971, provides: "In order to safeguard life, health and

property, and to promote the public welfare, construction standards of mobile homes in the state are hereby declared to be subject to regulation in the public interest."

Sec. 45.30.010. Mobile home standards. (a) The Department of Commerce and Economic Development shall, by regulations adopted under the Administrative Procedure Act (AS 44.62), set minimum mobile home standards for the state at least as stringent as those set out in the American National Standards Institute Code A119.1 — 1972 for mobile homes. The department may adopt that code by reference, specifying appropriate modifications, if any, of it.

(b) The regulations adopted under (a) of this section apply to all mobile homes constructed in the state and to new and used mobile homes brought into the state after July 1, 1974. The regulations adopted under (a) of this section do not apply to travel trailers primarily designed as temporary living accommodations for recreational, camping or travel use drawn by another vehicle and which meet the legal highway requirements without permit: pickup campers, motor homes, or vehicular, portable structures with the dimensions of 35 feet in length and eight feet in width, or less.

(c) No mobile home may be brought into the state, sold or offered or exposed for sale after July 1, 1974 unless it complies with the regulations adopted under (a) of this section.

(d) The regulations adopted under (a), (b) and (c) of this section do not apply to mobile homes brought into the state before September 1, 1971. (§ 2 ch 80 SLA 1971; am § 1 ch 123 SLA 1972; am §§ 1, 2 ch 114 SLA 1974; am § 107 ch 218 SLA 1976)

Effect of amendments. — The 1972 amendment rewrote this section.

The 1974 amendment rewrote subsection (b) and added subsections (c) and (d).

The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of

Commerce" in the first sentence of subsection (a).

Editor's note. — Copies of the code referred to in this section may be obtained by writing to the American National Standards Institute at 1430 Broadway, New York, New York 10018.

Sec. 45.30.020. Duties of department.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.030. Administration. (a) Repealed by § 5 ch 123 SLA 1972.

(b) The department is responsible for inspecting mobile homes constructed in the state and new and used mobile homes coming into the state after September 10, 1972 and may adopt regulations for the enforcement of this chapter. A mobile home which meets the specification of the regulations adopted under § 10 of this chapter shall have affixed to it a state approval tag stating that it meets state requirements. The cost of the tag is \$25 and shall be paid by the manufacturer or owner of the mobile home to the department.

(c) A mobile home manufacturer or owner of a mobile home may make application for plan approval to the department in accordance with the regulations adopted under (b) of this section. The filing fee for each application is \$100 with an annual renewal fee of \$50 and shall be paid to the department. Each manufacturer constructing mobile homes for sale in the state shall deposit a performance bond with the department to assure construction compliance before plan approval will be given. Performance bonds required under this section shall be in the following amounts and based on the number of units shipped into the state during the previous 12 months: (1) one to 50 units, \$20,000; (2) in excess of 50 units, \$50,000; (3) new manufacturers obtaining plan approval for the first time, \$20,000. A manufacturer who discontinues constructing mobile homes for sale in the state shall maintain a performance bond in the required amount for a period of 24 months after the date the last mobile home was brought into the state. (§ 2 ch 80 SLA 1971; am §§ 2, 5 ch 123 SLA 1972; am §§ 3, 4 ch 114 SLA 1974)

Effect of amendments. — The 1972 amendment repealed subsection (a). In subsection (b), the amendment substituted "the effective date of this Act and may adopt regulations for the enforcement of this chapter" for "September 1, 1971" in the first sentence, and substituted "regulations adopted under § 10 of this chapter" for "Code" in the second sentence.

The 1974 amendment, in subsection (b), deleted "of this Act" following "September 10, 1972" in the first sentence, substituted "state approval tag" for "state inspection tag" in the second sentence, and "\$25" for "\$10" in the third sentence. The amendment also added subsection (c).

Sec. 45.30.040. Enforcement of compliance. (a) A department inspector shall give written notice to the owner or manufacturer of a mobile home of each violation of the regulations adopted under § 10 of this chapter. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the regulations.

(b) A mobile home found in violation of this chapter shall be marked

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or tagged by the inspector indicating that it is rejected. Mobile homes rejected by the department remain subject to the control of the rejecting authority until the violation is corrected. The owner or manufacturer of a rejected mobile home shall correct the violation within 30 days or a longer period when authorized by the department, or the owner or manufacturer may dispose of it in a manner authorized by the department. Rejected mobile homes may not be offered or exposed for sale until officially reexamined or until specific written permission for their sale is issued by the department. (§ 2 ch 80 SLA 1971; am § 3 ch 123 SLA 1972; am § 5 ch 114 SLA 1974)

Effect of amendments. — The 1972 amendment designated the former section as subsection (a) and added subsection (b). In subsection (a), the amendment substituted "regulations adopted under § 10 of this chapter" for "Code" in the first sentence, and substituted "regulations" for "Code" in the second sentence.

The 1974 amendment inserted "or manufacturer" following "owner" once in the first sentence of subsection (a) and twice in the second sentence of subsection (b).

Sec. 45.30.050. Penalty. A person who violates a provision of this chapter or the regulations adopted under § 10 of this chapter, or who, after receiving the notification required by § 40 of this chapter, refuses or fails to correct the violation, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000. Each mobile home constructed or brought into the state in violation of those regulations is a separate violation. (§ 2 ch 80 SLA 1971; am § 4 ch 123 SLA 1972; am § 6 ch 114 SLA 1974)

Effect of amendments. — The 1972 amendment substituted "regulations adopted under § 10 of this chapter, or" for "Code, and" in the first sentence, inserted "or fails" in that sentence, substituted "those regulations" for "this chapter" in

the second sentence, and deleted "of this chapter" following "separate violation" at the end of that sentence.

The 1974 amendment inserted "this chapter or" following "a provision of" near the beginning of the first sentence.

Sec. 45.30.060. Definitions.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.070. Certain landlord-vendor agreements prohibited. A vendor of mobile homes may not require as a condition of sale that a purchaser locate the mobile home in a particular mobile home park or in one of a particular group of mobile home parks. (§ 6 ch 138 SLA 1976)

Legislative committee report. — For am S [re-engrossed], see 1976 Senate report on ch. 138, SLA 1976 (SCS CSHB 829 Journal, p. 1368.

To: House Judiciary Committee Members

From: Berck

Re: Virginia Law Requested

§ 46.1-547.1

1978 CUMULATIVE SUPPLEMENT

§ 46.1-547.1

§ 46.1-547.1. Warranty obligations of manufacturer, etc., and dealer. — (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, shall compensate the dealer for warranty service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid such dealers for parts, work and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by the dealer, and the prevailing labor rate being charged by the dealer, in the community in which the dealer is doing business, and in no event shall such compensation of a dealer for warranty service be less than the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs.

(b) It is a violation of this chapter for any motor vehicle manufacturer, factory branch, distributor or distributor branch to fail to perform any of its warranty obligations including tires with respect to a motor vehicle, to fail to assume all responsibility for any liability resulting from structural or production defects, or to fail to include in written notices of factory recalls to vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of such defects, to fail to compensate any of the motor vehicle dealers licensed in this State for repairs effected by such dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor or distributor branch, or to fail to compensate its motor vehicle dealers licensed in this State for warranty parts, work and service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor or distributor branch is legally responsible or which the manufacturer, factory branch, distributor or distributor branch impose upon the dealer, to misrepresent in any way to purchasers of motor vehicles that warranties with respect to the manufacture, performance or design of the vehicle are made by the dealer, either as warrantor or co-warrantor, or to require the dealer to make warranties to customers in any manner related to the manufacture, performance or design of the vehicle.

(b1) Notwithstanding the terms of any franchise agreement, it shall be a violation of this chapter for any motor vehicle manufacturer, factory branch, distributor or distributor branch to fail to indemnify and hold harmless its motor vehicle dealers against any losses and/or damages arising out of complaints, claims or suits relating to the manufacture, assembly, or design of motor vehicles, parts or accessories, or other functions by the manufacturer, factory branch, distributor or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor or distributor branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor or distributor branch. The dealer shall give notice to the manufacturer of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer franchise issued to, amended, or renewed for motor vehicle dealers in Virginia on or after July one,

nineteen hundred seventy-eight, shall be deemed to incorporate provisions consistent with the requirements of this subsection.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor or distributor branch and the dealer with respect to any matter referred to in subsections (a), (b) and (b1) above, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty. (1972, c. 698; 1974, c. 188; 1977, c. 163; 1978, c. 662.)

Code Commission note. — Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, referred to at the end of subsection (c), was repealed by Acts 1975, c. 503. For present provisions covering the subject matter of the repealed chapter, see § 9-6.14:1 et seq.

The 1977 amendment inserted "diagnosis and" in the third sentence of subsection (a), substituted "principal factors to be given consideration shall be" for "factors to be given consideration shall include, among others, the compensation being paid by other manufacturers to their dealers" in the fourth sentence of that subsection, and added the language beginning "to misrepresent in any way" to the end of subsection (b)

The 1978 amendment added at the end of subsection (a) "and in no event shall such compensation of a dealer for warranty service be less than the rates charged by such dealer for like service to retail customers for nonwarranty

service and repairs." In subsection (b), the amendment substituted "a violation of this chapter" for "unlawful" and inserted "including tires" near the beginning of the subsection, inserted "or" preceding "to fail to include in written notices" and inserted "to fail to compensate any of the motor vehicle dealers licensed in this State for repairs effected by such dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor or distributor branch" near the middle of the subsection. The amendment also inserted subsection (b1) and added the reference to subsection (b1) near the beginning of subsection (c).

Law Review.

For a discussion of the amendments to this act in the survey of Virginia law on business associations for the year 1976-77, see 68 Va. L. Rev. 1373 (1977)

§ 46.1-547.2. Operation of dealership by manufacturer, etc. — It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch or subsidiary thereof, to own, operate or control any motor vehicle dealership in this State, provided that this section shall not be construed to prohibit (1) the operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another, or (2) the ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, during a period while such dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or (3) the ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to July one, nineteen hundred seventy-two, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the community to own and operate the franchise in a manner consistent with the public interest, or (4) the ownership, operation or control of a dealership by manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent

vehicle dealer franchise in this State shall be deemed the engaging in business in this State for purposes of this section, and no new motor vehicle may be sold or offered for sale in this State unless the franchisor of motor vehicle dealer franchises for that line make in this State (whether such franchisor be a manufacturer, factory branch, distributor, distributor branch, or otherwise) is licensed under this chapter. In the event a license issued under this chapter to a franchisor of motor vehicle dealer franchises shall be suspended or revoked or shall not be renewed, nothing in this section shall be deemed to prevent the sale of any new motor vehicle of such franchisor's line make manufactured in or brought into this State for sale prior to the suspension, revocation or expiration of the license. (Code 1950, § 46-514; 1958, c. 541; 1974, c. 189; 1976, c. 362.)

The 1976 amendment inserted "new" preceding "motor vehicle dealer," substituted "used motor vehicle dealer" for "whether dealing in new or used vehicles or both" and inserted "distributor" preceding "distributor branch," all in the first sentence, and added the third and fourth sentences.

§ 46.1-525.1. Bond of dealer; right of action for fraudulent acts. — Before any motor vehicle dealer's license shall be issued by the Commissioner to any applicant therefor, such applicant shall procure and file with the Commissioner a good and sufficient bond in the amount of five thousand dollars with corporate surety duly licensed to do business within the State, approved by the Attorney General and conditioned that said applicant shall not practice fraud, make any fraudulent representation or violate any of the provisions of this chapter in the conduct of the business for which he is licensed.

If any person shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed used motor vehicle dealer or one of such dealer's salesmen acting for the dealer or within the scope of the employment of such salesman, or shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of this chapter, such person shall have a right of action against such dealer and the sureties upon his bond, and may recover such damages, as a court or jury may assess against such dealer as a proximate result of such fraud or fraudulent misrepresentation, from such surety who shall be subrogated to the rights of such person against such dealer. (1970, c. 298; 1972, c. 353; 1976, c. 363.)

The 1976 amendment, in the first paragraph, deleted "used" preceding "motor vehicle" near the beginning and deleted the former two provisions pertaining to the exception to the bond requirement for dealers in business for at least one year and requirement for filing an affidavit that there were no standing judgments against such dealer.

§ 46.1-528. License fees; additional to other licenses and fees required by law. — (a) The license fee for each fiscal year or part thereof, shall be as follows:

- (1) For motor vehicle dealers, distributors and wholesalers, fifty dollars for each principal place of business, plus fifteen dollars for a supplemental license for each carlot more than twenty-five yards distant from a principal place of business.
- (2) For manufacturers, fifty dollars, and for each branch factory in this State, fifty dollars.
- (3) [Repealed.]
- (4) For motor vehicle salesmen, five dollars.
- (5) For factory representatives, or distributor branch representatives, five dollars.

(b) The licenses and fees required by this chapter are in addition to licenses, taxes and fees imposed by other provisions of law and nothing contained in this

dealer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest, or (5) the ownership, operation or control of a dealership dealing exclusively with school buses by a school bus manufacturer or school bus parts manufacturer or a person who assembles school buses. (1972, c. 698; 1975, c. 303; 1976, c. 369.)

The 1975 amendment substituted "this State" for "a community or trade area of this State already served by a motor vehicle dealer under a franchise for the same line make from such manufacturer, factory branch, distributor or

distributor branch, or subsidiary" near the beginning of the section and inserted "or trade area" following "available in the community" in clause (4).

The 1976 amendment added clause (5).

§ 46.1-550. Salesman selling for other than his employer prohibited.

Code Commission note. — Acts 1976, c. 362, reenacted this section without change.

§ 46.1-550.1. Hearings before Commissioner; when Commissioner to initiate investigations, etc.; other remedies. — A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia.

B. Notwithstanding any provision of this article to the contrary, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information by the Motor Vehicle Dealers' Advisory Board or any party indicating a possible violation of any provision of this article. Before rendering any decision under this article, the Commissioner shall obtain recommendations on the subject from the Motor Vehicle Dealers' Advisory Board, such recommendations to be provided within fifteen days after the Commissioner's request for recommendations.

C. The availability of administrative procedures under this article, including hearing procedures before the Commissioner, shall not preclude the utilization of other remedies for violation of this article which are available to the affected parties, including actions for injunctive relief or damages.

D. For purposes of any matter brought to the Commissioner under this article with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider, among other relevant factors, (i) the volume of the affected dealer's business in the trade area; (ii) the nature and extent of the dealer's investment in its business; (iii) the adequacy of the dealer's service facilities, equipment, parts, supplies and personnel; (iv) the effect of the proposed action on the community; (v) the extent and quality of the dealer's service under motor vehicle warranties; (vi) the dealer's performance under the terms of its franchise agreement; and (vii) the recommendations of the Motor Vehicle Dealers' Advisory Board. (1972, c. 698; 1975, c. 305; 1977, c. 163; 1978, c. 223.)

Code Commission note. — Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, referred to at the end of subsection A, was repealed by Acts 1975, c. 503. For present provisions covering the subject matter of the repealed chapter, see § 9-6.14:1 et seq.

The 1975 amendment designated the former provisions of this section as subsection A and added subsections B and C.

The 1977 amendment added the second sentence of subsection B.

The 1978 amendment added subsection D.

(6) An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

(c) "*Motor vehicle salesman*" or "*salesman*" means any person who is employed as a salesman by, or has an agreement with, a motor vehicle dealer to sell or exchange motor vehicles.

(d) "*Distributor*" or "*wholesaler*" means a person, resident or nonresident in this State, who in whole or in part, sells or distributes motor vehicles to motor vehicle dealers in this State or who maintains a distributor representative in this State.

(e) "*Factory branch*" means a branch office, maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in this State.

(f) "*Distributor branch*" means a branch office maintained by a distributor or wholesaler for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in this State.

(g) "*Factory representative*" means a person employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in this State.

(h) "*Distributor representative*" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles dealt in by it or for supervising or contacting its dealers, prospective dealers, or representatives in this State.

(i) "*Established place of business*" means a salesroom in a permanent enclosed building or structure, either owned in fee or leased, at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place. It shall not mean residence, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a motor vehicle dealer, as herein defined.

(j) Reserved.

(k) "*Retail instalment sale*" means and includes every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price thereof is payable in one or more instalments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a conditional sale, bailment lease, chattel mortgage or otherwise. (Code 1950, § 46-503; 1950, p. 1304; 1956, c. 120; 1958, c. 541; 1962, c. 368; 1964, c. 375; 1974, c. 189.)

The 1974 amendment substituted "partnership, association, corporation or entity which" for "who" in the introductory paragraph of subdivision (a) and "or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase" for "or offers or

attempts to negotiate a sale" and added the language beginning "whether or not such motor vehicles" at the end of paragraph (1) of subdivision (a). The amendment also added paragraph (6) to subdivision (b).

§ 46.1-517. **General powers of Commissioner.** — (a) The Commissioner shall promote the interest of the retail buyers of motor vehicles.

(b) The Commissioner may prevent unfair methods of competition and unfair or deceptive acts or practices. (Code 1950, § 46-504; 1958, c. 541.)

Law Review. — For survey of Virginia law on administrative law for the year 1971-1972, see 58 Va. L. Rev. 1159 (1972).

§ 46.1-518. Powers with respect to hearings, legal proceedings, witnesses, etc. — The Commissioner may, in hearings arising under this chapter, determine the place in the State where they shall be held; subpoena witnesses; take depositions of witnesses residing without the State in the manner provided for in civil actions in courts of record; pay such witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths. (Code 1950, § 46-505; 1958, c. 541.)

§ 46.1-519. Suit to enjoin violations. — The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this chapter, in addition to any other remedy, bring action in the name of the State against such person and any other persons concerned or in any other way participating in, or about to participate in, practices or acts so in violation, to enjoin such person and such other persons from continuing the same. (Code 1950, § 46-506; 1958, c. 541.)

§ 46.1-520. Rules and regulations. — The Commissioner may make such rules and regulations, not inconsistent with the provisions of this chapter, as he shall deem necessary or proper for the effective administration and enforcement of this chapter, provided that a copy of such rules and regulations shall be mailed to each new vehicle dealer licensee ten days prior to the effective date of such rules and regulations. (Code 1950, § 46-507; 1958, c. 541.)

§ 46.1-521. Examination of licensee; complaints; costs. — (a) The Commissioner may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint for a violation of this chapter made to him against such licensee. If such licensee is found to have violated this chapter or any lawful order of the Commissioner, the actual cost of such examination shall be paid by such licensee so examined within thirty days after demand therefor by the Commissioner. The Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

(b) No licensee shall be subject to examination or audit by the Commissioner except as provided in this section. (Code 1950, § 46-508; 1958, c. 541.)

§ 46.1-522. Penalties. — Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not exceeding five hundred dollars or to undergo imprisonment for not to exceed six months, or by both such fine and imprisonment. (Code 1950, § 46-509; 1958, c. 541.)

ARTICLE 2.

Licenses.

§ 46.1-523. Licenses required. — It is unlawful for any person, partnership, association, corporation, or other entity to engage in business in this State as a motor vehicle dealer, whether dealing in new or used vehicles or both, trailer or semitrailer dealer, motor vehicle salesman, manufacturer, factory branch, distributor branch, or factory or distributor representative without first obtaining a license as provided in this chapter. If any motor vehicle dealer acts as motor vehicle salesman, he shall obtain a motor vehicle salesman's license in addition to a motor vehicle dealer's license. (Code 1950, § 46-514; 1958, c. 541; 1974, c. 189.)

The 1974 amendment substituted the language beginning "person, partnership," and ending "used vehicles or both" for "new motor vehicle dealer" near the beginning of the first sentence and deleted "used motor vehicle dealer" following "semitrailer dealer," and "to

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 294
 Title "An Act relating to mobile homes"
 Requested by House Judiciary Committee Date 3-6-79

II. FISCAL DETAIL

Agency Affected Commerce & Economic Development
 Program Category Affected Public Protection
 Budget Request Unit(s) Affected Weights & Measures

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		74.8	79.3	84.1	89.2	94.6
200 TRAVEL		15.0	15.9	16.0	17.0	18.0
300 CONTRACTUAL		4.5	4.8	5.1	5.4	5.7
400 COMMODITIES						
500 EQUIPMENT		0.5	0.5	0.6	0.6	0.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		94.8	100.5	105.8	112.2	119.0

FUNDING (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND		94.8	100.5	105.8	112.2	119.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME	3	3	3	3	3	3
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Personal Services

12 months, Mobile Home Inspector, R-16 22,656
 12 months, Mobile Home Inspector, R-14 19,548
 12 months, Clerk-typist, R-8 13,296
 Benefits=9,435 FICA=4,764 Health Insurance=5,087 19,286

Travel

74,786
 15,000

Contractual

Vehicle: 1 sedan \$13,500/mi @ .23/mi usage 3,105
 \$115/mo x 12 fixed 1,380
 4,485

Equipment:

1 desk=250 1 chair=100 1 file cabinet=150 500

IV. DATE March 6, 1979 PREPARED BY J. Swanson
 AGENCY Weights & Measures, Dept. of Commerce
 Original: Legislative Finance PHONE 279-0508
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

from Dept. of Law
Consumer Protection

March 6, 1979

MOBILE HOME WARRANTY
PROBLEMS IN ALASKA

Statistical records of the Consumer Protection Section of the Attorney General's Office show that more than 68 consumers filed complaints within the past 24 months about structural and warranty problems with new mobile homes. (Anchorage - 40+; Fairbanks - 16+; Juneau - 12+)

There appear to be 12 major problem areas. The following is a summary of those areas about which consumers most often complained:

1. Defects in Interior Construction of mobile home (flooring/walls/cabinets/paneling/doors/ceilings) At least 43 consumers complained of up to 15 such defects in the interior of their mobile home. Some of the more serious complaints involve loose, damaged or missing wall and ceiling paneling; interior doors that do not fit and therefore will not open or shut properly; and cabinets that pull away from the walls leaving gaps of 1 inch or more.
2. Defects in Exterior Construction of mobile home (Doors/walls/trim/raingutters) At least 35 consumers complained of up to 5 defects in the exterior construction of their mobile home. Those complaints include windows improperly installed, exterior doors warped so that they do not open or shut properly, and damaged or bowed exterior paneling and trim.
3. Lack of Response from Dealers and Manufacturers to consumer complaints. At least 36 consumers complained that they got little or no assistance from the dealer or manufacturer when they contacted them about problems with a newly purchased mobile home. Among the major complaints were months of waiting before any one would even come and look at the problem; incompetent repair personnel; and consumers being told that their problem was "normal" with mobile homes and the consumer would just have to live with it.
4. Leaks in windows/ceiling/doors/exhaust fans. At least 37 or more consumers complained of leaks from various areas of their mobile homes. Some complainants had 9 or more places in their mobile homes that leaked. Although up to 6 attempts were made to repair some of these leaks, nearly all of them were chronic situations that were never satisfactorily repaired.

5. Interior Damage due to water leakage/mold/ condensation. At least 35 consumers each had up to 4 complaints about water damage caused by leaks or melting ice around windows and doors. Those complaints include water-soaked carpets, insulation and electrical wiring; water running down walls from leaking or thawing windows; mold growing on ceilings and walls due to dampness and condensation.

6. Defects in Furniture or Appliances. At least 29 consumers have had up to 2 complaints each about the furniture and/or appliances in their mobile home. Those complaints include appliances installed improperly so that they are inoperative; defects in furniture at time of delivery of mobile home; and furniture falling apart after a few months use.

7. Defects in Plumbing (leaky pipes/condensation/ lack of sealant/bathroom fixtures) At least 26 consumers complained of up to 9 plumbing problems in their mobile home. Among those complaints are leaks from bathroom and kitchen fixtures; hot and cold water lines reversed; and loud knocking noises in water pipes.

8. Doors and Windows Freezing Over due to ice buildup. At least 20 consumers complained that some or all of the doors and windows of their mobile home froze shut in the winter time due to condensation and leaks. Not only is this condition unacceptable under ordinary circumstances, it poses a grave threat to occupants of the mobile home in case of a fire.

9. Defects in Electrical System/light fixtures/ exhaust fans. At least 20 consumers complained of 3 or more electrical problems in their mobile home. Among those complaints are improper wiring which leaves live wires exposed, inoperable electrical sockets improperly installed light fixtures, and unexplained electrical power surges.

10. Drafts from tip out seams/windows/doors. At least 15 consumers complained of drafts from various spots in their mobile home. The most frequent complaint was of drafts from poorly connected "tip-outs" or "expando" units attached to the mobile home. Other complaints were of drafts from poorly fitting windows and doors.

11. Defects in Heating System. At least 15 consumers complained of defects in the heating system in their mobile home. The main complaints were insufficient heat being produced by heating system, complete furnace failure within a few months of purchasing the mobile home, and damaged heating ducts.


12. Inadequate Insulation. At least 12 consumers complained of inadequate insulation. The main complaints were ice buildup on the roof and sides of the mobile home because of heat loss due to inadequate insulation, and insufficient insulation for Alaska climate zone.

Case Examples

As an example of the magnitude of problems that occur, a new mobile home that cost the purchaser \$56,037.60 had a total of no less than 34 separate defects that fell within the above listed categories.

Another consumer who paid \$50,532.60 for her new mobile home had 12 defects that fall within the above listed categories. Her major complaint was that the furniture that came with the mobile home was falling apart and becoming unusable after only a few months use.

Another mobile home for which the purchaser paid \$51,205.40 had so many leaks and condensation problems that the mobile home was virtually uninhabitable within a year. Some of the problems were musty smelling carpets; warped flooring; stained draperies; walls and ceilings; rusty hinges; bubbles in linoleum; mold growing on walls and ceilings in closets.



HB 294 -

furniture - appliances

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range - 16