

CHAPTER 213

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 98-1203

BY REPRESENTATIVES Smith, K. Alexander, Dyer, George, Nichol, and Tupa;
also SENATORS Perlmutter, Chlouber, Hernandez, J. Johnson, Martinez, Rupert, Schroeder, and Tanner.

AN ACT

CONCERNING DECEPTIVE TRADE PRACTICES RELATING TO THE SALE OF MANUFACTURED HOMES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 6-1-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

6-1-102. Definitions. As used in this article, unless the context otherwise requires:

(4.9) "MANUFACTURED HOME" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 42-1-102 (106) (b), C.R.S.

(13.5) "UNAVOIDABLE DELAY" MEANS INCLEMENT WEATHER AND OTHER EVENTS OUTSIDE THE CONTROL OF THE BUYER OR SELLER.

SECTION 2. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(qq) EXCEPT WITH RESPECT TO ACTIVITIES SUBJECT TO ARTICLE 61 OF TITLE 12, C.R.S., AND THOSE THAT WOULD BE COVERED EXCEPT FOR A SPECIFIC EXEMPTION SET FORTH IN SAID ARTICLE 61 OF TITLE 12, C.R.S., IN CONNECTION WITH THE ADVERTISEMENT OR SALE OF A MANUFACTURED HOME:

(I) FAILS TO DISCLOSE CLEARLY AND CONSPICUOUSLY IN THE CONTRACT THE DATE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ON WHICH THE MANUFACTURED HOME WILL BE DELIVERED, SUBJECT TO THE POSSIBILITY OF UNAVOIDABLE DELAY;

(II) (A) FAILS TO ESCROW HOME SALE DEPOSITS IN A SEPARATE FIDUCIARY ACCOUNT FOR THE BENEFIT OF HOME PURCHASERS IN A BANK OR TRUST COMPANY DOING BUSINESS IN THE STATE OF COLORADO OR PROVIDE A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT ISSUED BY A LICENSED FINANCIAL INSTITUTION, OR A SURETY BOND ISSUED BY AN AUTHORIZED INSURER IN A FORM APPROVED BY THE ATTORNEY GENERAL OF THE STATE OF COLORADO AND CONDITIONED UPON THE PERSON'S REFUND OF ANY HOME SALE DEPOSIT RECEIVED UNDER AGREEMENTS FOR THE SALE OF MANUFACTURED HOMES. NO FINANCIAL INSTITUTION OR CORPORATE SURETY SHALL BE REQUIRED TO MAKE ANY PAYMENT TO ANY PERSON CLAIMING UNDER SUCH DEPOSIT OR BOND UNTIL A FINAL DETERMINATION OF FRAUD, DEFALCATION OF FUNDS, OR CONVERSION HAS BEEN MADE BY A COURT OF COMPETENT JURISDICTION OR UPON A BANKRUPTCY FILING BY THE SELLER, OR UPON THE FAILURE TO REFUND OR PAY A REASONABLE PER DIEM LIVING EXPENSE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH(qq).

(B) ANY LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, SURETY BOND, OR OTHER SIMILAR SURETY SHALL BE FILED WITH AND DRAWN IN FAVOR OF THE ATTORNEY GENERAL OF THE STATE OF COLORADO FOR USE OF THE PEOPLE OF THE STATE OF COLORADO WHO ARE PURCHASERS OF MANUFACTURED HOMES AND SHALL BE REVOCABLE ONLY WITH THE WRITTEN CONSENT OF THE ATTORNEY GENERAL.

(C) IN ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME, THE SELLER SHALL DISCLOSE IN THE CONTRACT THAT THE BUYER MAY HAVE NO LEGAL RIGHT TO RESCIND THE CONTRACT UNLESS SPECIFICALLY PROVIDED BY THE TERMS OF THE CONTRACT OR FOR DELINQUENT DELIVERY AND THAT THE SELLER HAS A SEPARATE FIDUCIARY ACCOUNT FOR THE ESCROW OF HOME SALE DEPOSITS PENDING DELIVERY OR A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, SURETY BOND, OR OTHER SIMILAR SURETY FILED WITH THE ATTORNEY GENERAL OF THE STATE OF COLORADO FOR THE REPAYMENT OF HOME SALE DEPOSITS PENDING DELIVERY OF MANUFACTURED HOMES. ANY SUCH CONTRACT SHALL ALSO DISCLOSE THAT ESCROW DEPOSIT COMPLAINTS AGAINST SELLERS OF MANUFACTURED HOMES MAY BE FILED WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF COLORADO OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT WHERE THE SALE OCCURS. ANY SUCH CONTRACT SHALL ALSO DISCLOSE THAT AN AGGRIEVED PERSON MAY BRING A CIVIL ACTION UNDER THE "COLORADO CONSUMER PROTECTION ACT" TO REMEDY VIOLATIONS OF THE PROVISIONS OF THIS PARAGRAPH (qq).

(III) ALL CONTRACTS FOR THE SALE OF A MANUFACTURED HOME MUST PROVIDE A DATE CERTAIN FOR DELIVERY OF THE HOME, OR A SPECIFICATION OF DELIVERY PRECONDITIONS WHICH MUST OCCUR BEFORE THE DATE OF HOME DELIVERY CAN BE DETERMINED. UNLESS DELAY IN DELIVERY IS UNAVOIDABLE, OR CAUSED BY THE BUYER, THE CONTRACT FOR MANUFACTURED HOME SALE SHALL FURTHER PROVIDE THAT, AT SELLER'S ELECTION, HE WILL REFUND THE HOME SALE DEPOSIT OR PAY A REASONABLE BUYER LIVING EXPENSE PER DIEM WHICH RELATES BACK TO THE CONTRACT DELIVERY DATE IF THE DATE OF DELIVERY IS MORE THAN SIXTY DAYS AFTER THE CONTRACT DATE OF DELIVERY OR THE COMPLETION OF DELIVERY PRECONDITIONS SET FORTH IN THE CONTRACT IF NO DELIVERY DATE CERTAIN HAS BEEN SET.

SECTION 3. The introductory portion to 6-1-113 (2), Colorado Revised Statutes, is amended, and the said 6-1-113 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

6-1-113. Damages. (2) Except in a class action OR A CASE BROUGHT FOR A VIOLATION OF SECTION 6-1-105 (1) (qq), any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in section 6-1-105 or 6-1-105.5 shall be liable in an amount equal to the sum of:

(2.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, IN THE CASE OF ANY VIOLATION OF SECTION 6-1-105 (1) (qq), IN ADDITION TO INTEREST, COSTS OF THE ACTION, AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT, THE PREVAILING PARTY SHALL BE ENTITLED ONLY TO DAMAGES IN AN AMOUNT SUFFICIENT TO REFUND MONEYS ACTUALLY PAID FOR A MANUFACTURED HOME NOT DELIVERED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 6-1-105 (1) (qq).

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to the advertisement or sale of manufactured homes on or after the applicable effective date of this act.

Approved: May 22, 1998