

CHAPTER 229

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 99-1270

BY REPRESENTATIVES Spradley, Kester, Hefley, Hoppe, May, McElhany, Tapia, Webster, Bacon, Coleman, and Larson;
also SENATORS Musgrave, Phillips, Wattenberg, Epps, Hernandez, Martinez, Reeves, and Rupert.

AN ACT

CONCERNING SELLERS OF MANUFACTURED HOMES, AND, IN CONNECTION THEREWITH, IMPOSING
REGISTRATION, ESCROW AND BONDING, AND CONTRACT REQUIREMENTS UPON SUCH SELLERS, AND
MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Article 1 of title 6, Colorado Revised Statutes, is amended BY THE
ADDITION OF A NEW PART to read:

PART 6

**SELLERS OF MANUFACTURED HOMES - REGISTRATION, ESCROW
AND BONDING, AND CONTRACT REQUIREMENTS**

6-1-601. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS
AND DECLARES THAT:

(a) THE PROTECTION OF COLORADO CONSUMERS WHO PURCHASE MANUFACTURED
HOMES FROM FRAUD AND OTHER UNFAIR BUSINESS PRACTICES IS A MATTER OF
STATEWIDE CONCERN;

(b) SUCH CONSUMERS CAN BEST BE PROTECTED BY:

(I) REQUIRING REGISTRATION OF PERSONS ENGAGED IN THE BUSINESS OF SELLING
MANUFACTURED HOMES;

(II) IMPOSING UNIFORM ESCROW AND BONDING REQUIREMENTS UPON PERSONS
ENGAGED IN THE BUSINESS OF SELLING MANUFACTURED HOMES; AND

(III) REQUIRING PERSONS ENGAGED IN THE BUSINESS OF SELLING MANUFACTURED

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

HOMES TO INCLUDE SPECIFIED DISCLOSURES AND PROVISIONS IN ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME;

(c) THE IMPOSITION OF REGISTRATION REQUIREMENTS UPON SELLERS OF MANUFACTURED HOMES BY BOTH THE STATE AND POLITICAL SUBDIVISIONS OF THE STATE WOULD IMPOSE AN UNDUE BURDEN UPON SELLERS OF MANUFACTURED HOMES AND DISCOURAGE THE SALE OF MANUFACTURED HOMES; AND

(d) THE UNIFORM REGISTRATION, ESCROW AND BONDING, AND CONTRACT REQUIREMENTS IMPOSED ON SELLERS OF MANUFACTURED HOMES BY THIS SECTION ARE EXCLUSIVE AND NO POLITICAL SUBDIVISION OF THE STATE SHALL IMPOSE ANY ADDITIONAL REGISTRATION, ESCROW AND BONDING, OR CONTRACT REQUIREMENTS ON SUCH SELLERS.

6-1-602. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "PRINCIPAL" MEANS AN OFFICER OF A CORPORATION, A MEMBER OF A LIMITED LIABILITY COMPANY, A GENERAL PARTNER OF A PARTNERSHIP, THE SOLE PROPRIETOR OF A SOLE PROPRIETORSHIP, OR ANY PERSON WHO HAS A FINANCIAL INTEREST OF TEN PERCENT OR MORE IN ANY LEGAL OR COMMERCIAL ENTITY.

6-1-603. Sellers of manufactured homes - registration - manufactured home seller registration fund. (1) ANY PERSON WHOSE BUSINESS INVOLVES THE SALE OF MANUFACTURED HOMES SHALL BE REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING BEFORE ENGAGING IN THE BUSINESS OF SELLING MANUFACTURED HOMES IN COLORADO. ANY PERSON WHO WISHES TO ENGAGE IN THE BUSINESS OF SELLING MANUFACTURED HOMES IN COLORADO THROUGH ADVERTISING OR SALES ACTIVITIES BUT WHO DOES NOT OPERATE A RETAIL LOCATION IN COLORADO SHALL OBTAIN A SINGLE REGISTRATION. ANY PERSON WHO WISHES TO ENGAGE IN THE BUSINESS OF SELLING MANUFACTURED HOMES FROM ONE OR MORE RETAIL LOCATIONS IN COLORADO SHALL OBTAIN A SEPARATE REGISTRATION FOR EACH LOCATION. THE REGISTRATION REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO ANY INDIVIDUAL WHO, FOR A SALARY, COMMISSION, OR COMPENSATION OF ANY KIND, IS EMPLOYED DIRECTLY OR INDIRECTLY BY ANY REGISTERED MANUFACTURED HOME SELLER TO SELL OR NEGOTIATE FOR THE SALE OF MANUFACTURED HOMES.

(2) AN APPLICATION FOR A REGISTRATION OR RENEWAL REQUIRED BY THIS SECTION SHALL BE SUBMITTED ON A FORM PROVIDED BY THE DIVISION OF HOUSING AND SHALL BE VERIFIED BY A DECLARATION SIGNED, UNDER PENALTY OF PERJURY, BY A PRINCIPAL OF THE MANUFACTURED HOME SELLER. THE APPLICATION SHALL CONTAIN, IN ADDITION TO SUCH OTHER INFORMATION REGARDING THE CONDUCT OF THE MANUFACTURED HOME SELLER'S BUSINESS AS THE DIVISION OF HOUSING MAY REASONABLY REQUIRE, THE NAME, ADDRESS, AND POSITION OF EACH PRINCIPAL OF THE MANUFACTURED HOME SELLER AND EACH PERSON WHO EXERCISES MANAGEMENT RESPONSIBILITIES AS PART OF THE MANUFACTURED HOME SELLER'S BUSINESS ACTIVITIES. THE APPLICATION SHALL ALSO CONTAIN THE ADDRESS AND TELEPHONE NUMBER OF EACH RETAIL LOCATION OPERATED BY THE APPLICANT AS WELL AS THE LOCATION AND ACCOUNT NUMBER OF THE SEPARATE FIDUCIARY ACCOUNT REQUIRED BY SECTION 6-1-604 (1). THE DECLARATION SHALL SPECIFY THE DATE AND LOCATION OF THE SIGNING, AND THE DIVISION OF HOUSING SHALL PRESERVE THE APPLICATION

AND DECLARATION AND MAKE THEM AVAILABLE FOR PUBLIC INSPECTION.

(3) A REGISTRATION ISSUED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE VALID FOR ONE YEAR AFTER THE DATE OF ISSUANCE. IF, AFTER ISSUANCE OF A REGISTRATION, ANY OF THE REQUIRED INFORMATION SUBMITTED WITH THE APPLICATION FOR SUCH REGISTRATION PURSUANT TO SUBSECTION (2) OF THIS SECTION BECOMES INACCURATE, A PRINCIPAL OF THE MANUFACTURED HOME SELLER SHALL NOTIFY THE DIVISION OF HOUSING IN WRITING OF SUCH INACCURACY WITHIN THIRTY DAYS AND PROVIDE THE DIVISION OF HOUSING WITH ACCURATE UPDATED INFORMATION.

(4) THE DIVISION OF HOUSING SHALL ESTABLISH REGISTRATION FEES OF NOT MORE THAN ONE HUNDRED FIFTY DOLLARS PER REGISTRATION OR RENEWAL FOR THE DIRECT AND INDIRECT COSTS OF THIS PART 6, WHICH FEES SHALL BE ASSESSED UPON ANY PERSON APPLYING FOR REGISTRATION PURSUANT TO THE PROVISIONS OF THIS SECTION. ALL FEES COLLECTED SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE MANUFACTURED HOME FUND, WHICH FUND IS HEREBY CREATED. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND OR USED FOR ANY PURPOSE OTHER THAN TO OFFSET THE COSTS OF IMPLEMENTING AND ADMINISTERING THIS PART 6. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS OF THE ADMINISTRATION OF THIS PART 6.

(5) FOR PURPOSES OF THIS SECTION, A PERSON IS NOT ENGAGED IN THE BUSINESS OF SELLING MANUFACTURED HOMES IF SUCH PERSON:

(a) IS A NATURAL PERSON ACTING PERSONALLY IN SELLING A MANUFACTURED HOME OWNED OR LEASED BY SUCH PERSON;

(b) SELLS A MANUFACTURED HOME IN THE COURSE OF ENGAGING IN ACTIVITIES THAT ARE SUBJECT TO THE PROVISIONS OF ARTICLE 61 OF TITLE 12, C.R.S., OR ACTIVITIES THAT WOULD BE SUBJECT TO SUCH PROVISIONS BUT FOR A SPECIFIC EXEMPTION SET FORTH IN ARTICLE 61 OF TITLE 12, C.R.S.;

(c) SELLS A MANUFACTURED HOME FOR SALVAGE OR NONRESIDENTIAL USE; OR

(d) DIRECTLY OR INDIRECTLY SELLS, IN ANY CALENDAR YEAR, THREE OR FEWER PREVIOUSLY OCCUPIED MANUFACTURED HOMES THAT ARE OWNED BY A MANUFACTURED HOME PARK OWNER AND ARE LOCATED WITHIN ONE OR MORE MANUFACTURED HOME PARKS IN COLORADO.

6-1-604. Escrow and bonding requirements. (1) ANY PERSON REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 SHALL ESCROW ALL MANUFACTURED HOME SALE DOWN PAYMENTS IN A SEPARATE FIDUCIARY ACCOUNT IN A BANK OR TRUST COMPANY THAT DOES BUSINESS IN THE STATE OF COLORADO UNTIL THE MANUFACTURED HOME IS DELIVERED TO THE PURCHASER.

(2) ANY PERSON REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING

PURSUANT TO SECTION 6-1-603 SHALL PROVIDE A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT ISSUED BY A LICENSED FINANCIAL INSTITUTION, OR SURETY BOND ISSUED BY AN AUTHORIZED INSURER IN THE AMOUNT OF FIFTY THOUSAND DOLLARS AND CONDITIONED UPON THE PERSON'S REFUND OF ANY HOME SALE DOWN PAYMENT IN ACCORDANCE WITH THE TERMS OF THE CONTRACT PURSUANT TO WHICH THE PAYMENT WAS RECEIVED. A PERSON REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 WHO WISHES TO ENGAGE IN THE BUSINESS OF SELLING MANUFACTURED HOMES FROM ONE OR MORE RETAIL LOCATIONS IN COLORADO NEED NOT PROVIDE A SEPARATE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND FOR EACH RETAIL LOCATION BUT MAY MEET THE REQUIREMENTS OF THIS SECTION BY PROVIDING A SINGLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND. THE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND SHALL BE FILED WITH THE DIVISION OF HOUSING AT THE SAME TIME AS THE INITIAL APPLICATION FOR REGISTRATION AND SHALL BE DRAWN IN FAVOR OF THE ATTORNEY GENERAL FOR THE USE OF THE PEOPLE OF COLORADO. AT LEAST ONCE PER MONTH, THE DIVISION OF HOUSING SHALL SEND THE ATTORNEY GENERAL AN UPDATED LIST OF ALL PERSONS REGISTERED AND BONDED PURSUANT TO THE REQUIREMENTS OF THIS ARTICLE. THE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND SHALL BE REVOCABLE ONLY UPON THE WRITTEN CONSENT OF THE ATTORNEY GENERAL. HOWEVER, A FINANCIAL INSTITUTION OR AUTHORIZED INSURER SHALL ONLY BE REQUIRED TO MAKE PAYMENT TO A PERSON MAKING A CLAIM AGAINST SUCH LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND IF A COURT OF COMPETENT JURISDICTION HAS RENDERED A FINAL JUDGMENT IN FAVOR OF SUCH PERSON BASED ON A FINDING THAT THE REGISTERED PERSON FAILED TO REFUND A MANUFACTURED HOME DOWN PAYMENT OR PROVIDE A REASONABLE PER DIEM LIVING EXPENSE IN VIOLATION OF THE CONTRACTUAL PROVISIONS REQUIRED BY SECTION 6-1-605, OR UPON A CEASING OF BUSINESS OPERATIONS OR A BANKRUPTCY FILING BY THE REGISTERED PERSON. ANY PERSON WHO IS REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 AND WHO FAILS TO PROVIDE A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND AS REQUIRED BY THIS SUBSECTION (2), OR WHO OTHERWISE FAILS TO PAY ANY JUDGMENT BY A COURT OF COMPETENT JURISDICTION IN FAVOR OF A PURCHASER OF A MANUFACTURED HOME SHALL BE SUBJECT TO THE SUSPENSION OR REVOCATION OF SUCH REGISTRATION BY THE DIVISION OF HOUSING.

6-1-605. Contract for sale of manufactured home - requirements. (1) ANY SELLER WHO IS REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 SHALL MAKE THE FOLLOWING DISCLOSURES IN ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME:

(a) THAT THE BUYER MAY HAVE NO LEGAL RIGHT TO RESCIND THE CONTRACT ABSENT DELINQUENT DELIVERY OF THE MANUFACTURED HOME OR THE EXISTENCE OF A SPECIFIC RIGHT OF RECISSION SET FORTH IN THE CONTRACT;

(b) THAT THE SELLER HAS A SEPARATE FIDUCIARY ACCOUNT FOR THE ESCROW OF HOME SALE DOWN PAYMENTS PENDING DELIVERY OF THE MANUFACTURED HOME AND A LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SURETY BOND FILED WITH THE DIVISION OF HOUSING FOR THE REPAYMENT OF HOME SALE DOWN PAYMENTS PENDING DELIVERY OF MANUFACTURED HOMES;

(c) THAT AN AGGRIEVED PERSON MAY FILE A COMPLAINT FOR A REFUND OF A DOWN

PAYMENT HELD IN ESCROW BY A SELLER OF MANUFACTURED HOMES AGAINST SUCH SELLER WITH THE ATTORNEY GENERAL OR WITH THE DISTRICT ATTORNEY FOR THE DISTRICT IN WHICH THE SALE OCCURS; AND

(d) THAT AN AGGRIEVED PERSON MAY BRING A CIVIL ACTION PURSUANT TO THE PROVISIONS OF THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF THIS TITLE, TO REMEDY VIOLATIONS OF THIS PART 6.

(2) ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME BY A PERSON WHO IS REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 SHALL CONTAIN THE FOLLOWING PROVISIONS:

(a) A DATE CERTAIN FOR THE DELIVERY OF THE MANUFACTURED HOME OR A LISTING OF SPECIFIED DELIVERY PRECONDITIONS THAT MUST OCCUR BEFORE A DATE CERTAIN FOR DELIVERY CAN BE DETERMINED;

(b) A STATEMENT THAT IF DELIVERY OF THE MANUFACTURED HOME IS DELAYED BY MORE THAN SIXTY DAYS AFTER THE DELIVERY DATE SPECIFIED IN THE CONTRACT FOR SALE OR BY MORE THAN SIXTY DAYS AFTER THE DELIVERY PRECONDITIONS SET FORTH IN THE CONTRACT OF SALE HAVE BEEN MET IF NO DATE CERTAIN FOR DELIVERY HAS BEEN SET, THEN THE SELLER WILL EITHER REFUND THE MANUFACTURED HOME SALE DOWN PAYMENT OR PROVIDE A REASONABLE PER DIEM LIVING EXPENSE TO THE BUYER FOR THE DAYS BETWEEN THE DELIVERY DATE SPECIFIED IN THE CONTRACT OR THE SIXTY-FIRST DAY AFTER THE DELIVERY PRECONDITIONS SET FORTH IN THE CONTRACT HAVE BEEN MET, WHICHEVER IS APPLICABLE, AND THE ACTUAL DATE OF DELIVERY, UNLESS THE DELAY IN DELIVERY IS UNAVOIDABLE OR CAUSED BY THE BUYER.

6-1-606. Unlawful manufactured home sale practices. (1) ANY PERSON WHO IS REQUIRED TO REGISTER WITH THE DIVISION OF HOUSING PURSUANT TO SECTION 6-1-603 ENGAGES IN AN UNLAWFUL MANUFACTURED HOME SALE PRACTICE WHEN SUCH PERSON:

(a) FAILS TO COMPLY WITH THE REGISTRATION REQUIREMENTS OF SECTION 6-1-603;

(b) FAILS TO COMPLY WITH THE ESCROW AND BONDING REQUIREMENTS OF SECTION 6-1-604;

(c) FAILS TO INCLUDE, IN ANY CONTRACT FOR THE SALE OF A MANUFACTURED HOME, ANY OF THE DISCLOSURES OR CONTRACT PROVISIONS REQUIRED BY SECTION 6-1-605; OR

(d) FAILS TO REFUND A MANUFACTURED HOME DOWN PAYMENT OR PROVIDE A REASONABLE PER DIEM LIVING EXPENSE IN VIOLATION OF THE CONTRACTUAL PROVISIONS REQUIRED BY SECTION 6-1-605 (2) (b).

SECTION 2. 6-1-105 (1) (qq), Colorado Revised Statutes, is amended 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: ENGAGES IN CONDUCT THAT CONSTITUTES AN UNLAWFUL MANUFACTURED HOME SALE PRACTICE AS DESCRIBED IN SECTION 6-1-606.~~

~~(f) Fails to disclose clearly and conspicuously in the contract the date on which the manufactured home will be delivered, subject to the possibility of unavoidable delay;~~

~~(H)(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 (H) 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).~~

~~(H) 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. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the manufactured home fund created in Section 6-1-603, Colorado Revised Statutes, not otherwise appropriated, for the fiscal year beginning July 1, 1999, the sum of forty thousand sixty-one dollars (\$40,061) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Of such sum, fifteen thousand eight hundred nine dollars (\$15,809) and 0.5 FTE, or so much thereof as may be necessary, is appropriated to the department of local affairs; and twenty-four thousand two hundred fifty-two dollars (\$24,252) and 0.5 FTE, or so much thereof as may be necessary, is appropriated to the department of law.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1999, the sum of one thousand five hundred dollars (\$1,500), or so much thereof as may be necessary, for the provision of legal services to the department of local affairs related to the implementation of this act. Such sum shall be from cash funds exempt received from the department of local affairs out of the appropriation made in subsection (1) of this section.

SECTION 4. Effective date - applicability. (1) This act shall take effect October 1, 1999, unless a referendum petition is filed during 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. If such 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 registration, escrow and bonding, and contract requirements of this act shall apply to persons engaged in the business of selling manufactured homes on or after the applicable effective date of this act.

Approved: May 24, 1999