

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1436

AN ACT

AMENDING SECTIONS 41-2142, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 245, SECTION 11; AMENDING SECTION 41-2144, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2147, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 245, SECTION 13; AMENDING SECTIONS 41-2152, 41-2153, 41-2154, 41-2172, 41-2173, 41-2174, 41-2175, 41-2176, 41-2177, 41-2179, 41-2180, 41-2181, 41-2182, 41-2186, 41-2190, 41-2191, 41-2193, 41-2195 AND 41-2196, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-2142, Arizona Revised Statutes, as amended by
3 Laws 2005, chapter 245, section 11, is amended to read:

4 41-2142. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Accessory structure" means the installation, assembly, connection
7 or construction of any one-story habitable room, storage room, patio, porch,
8 garage, carport, awning, skirting, retaining wall, evaporative cooler,
9 refrigeration air conditioning system, solar system or wood decking attached
10 to a new or used manufactured home, mobile home or residential single family
11 factory-built building.

12 2. "Act" means the national manufactured home construction and safety
13 standards act of 1974 and title VI of the housing and community development
14 act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and
15 96-339).

16 3. "Alteration of units" means the replacement, addition, modification
17 or removal of any equipment or installation after the sale by a manufacturer
18 to a dealer or distributor but prior to the sale by a dealer to a purchaser,
19 which may affect compliance with the standards, construction, fire safety,
20 occupancy, plumbing or heat-producing or electrical system. Alteration does
21 not mean the repair or replacement of a component or appliance requiring
22 plug-in to an electrical receptacle if the replaced item is of the same
23 configuration and rating as the component or appliance being repaired or
24 replaced. Alteration also does not mean the addition of an appliance
25 requiring plug-in to an electrical receptacle if such appliance is not
26 provided with the unit by the manufacturer and the rating of the appliance
27 does not exceed the rating of the receptacle to which such appliance is
28 connected.

29 4. "Board" means the board of manufactured housing.

30 5. "Broker" means any person who, on behalf of another, sells,
31 exchanges, buys, offers or attempts to negotiate or acts as an agent for the
32 sale or exchange of a used manufactured home or mobile home except as
33 exempted in section 41-2178.

34 6. "Component" means any part, material or appliance which is built-in
35 as an integral part of the unit during the manufacturing process.

36 7. "Consumer" means either a purchaser or seller of a unit regulated
37 by this chapter who utilizes the services of a person licensed by the
38 department.

39 8. "Consummation of sale" means that a purchaser has received all
40 goods and services that the dealer or broker agreed to provide at the time
41 the contract was entered into or the transfer of title. Consummation of sale
42 does not include warranties.

43 9. "Dealer" means any person who sells, exchanges, buys, offers or
44 attempts to negotiate or acts as an agent for the sale or exchange of
45 factory-built buildings, subassemblies, manufactured homes or mobile homes

1 except as exempted in section 41-2178. A lease or rental agreement by which
2 the user acquired ownership of the unit with or without additional
3 remuneration is considered a sale under this chapter.

4 10. "Defect" means any defect in the performance, construction,
5 components or material of a unit that renders the unit or any part of the
6 unit unfit for the ordinary use for which it was intended.

7 11. "Department" means the department of fire, building and life
8 safety.

9 12. "Director" means the director of the department.

10 13. "Earnest monies" means all monies given by a purchaser or a
11 financial institution to a dealer or broker before consummation of the sale.

12 14. "Factory-built building" means a residential or nonresidential
13 building including a dwelling unit or habitable room thereof which is either
14 wholly or in substantial part manufactured at an off-site location to be
15 assembled on-site, except that it does not include a manufactured home,
16 recreational vehicle or mobile home as defined in this section.

17 15. "HUD" means the United States department of housing and urban
18 development.

19 16. "Imminent safety hazard" means an imminent and unreasonable risk of
20 death or severe personal injury.

21 17. "Insignia of approval" means a numbered or serialized label or seal
22 issued by the ~~assistant~~ DEPUTY director of the office of ~~administration~~
23 MANUFACTURED HOUSING as certification of compliance with this chapter.

24 18. "Installation" means:

25 (a) Connecting new or used mobile homes, manufactured homes or
26 factory-built buildings to on-site utility terminals or repairing these
27 utility connections.

28 (b) Placing new or used mobile homes, manufactured homes, accessory
29 structures or factory-built buildings on foundation systems or repairing
30 these foundation systems.

31 (c) Providing ground anchoring for new or used mobile homes or
32 manufactured homes or repairing the ground anchoring.

33 19. "Installation supervision" means that the installer may act as an
34 installer of accessory structures for manufactured homes, mobile homes or
35 residential single family factory-built buildings and may also contract with
36 the purchaser or owner of a unit, or a dealer licensed under this chapter, to
37 arrange for, control and supervise all aspects of the installation of a unit
38 and accessory structures, including retaining and supervising persons whose
39 activities are licensed under this chapter. A licensed installer may not
40 contract with the purchaser or owner of a unit or with a dealer licensed
41 under this chapter, to arrange for, retain and supervise a person who is
42 licensed or regulated by an agency other than the office of manufactured
43 housing, unless the licensed installer is also licensed by the same agency
44 which licenses or regulates the person whom the installer retains and
45 supervises. Installation supervision also includes the installer's right, if

1 authorized by the purchaser, owner or dealer, to seek and obtain recourse,
2 remedies or relief against all persons whose activities are supervised. If
3 requested by a licensed installer or an applicant for an installer's license,
4 and approved by the ~~assistant~~ DEPUTY director pursuant to sections 41-2175
5 and 41-2176, an installer may obtain a license that includes installation
6 supervision.

7 20. "Installer" means any person who engages in the business of
8 performing installations of manufactured homes, mobile homes or residential
9 single family factory-built buildings.

10 21. "Installer of accessory structures" means any person who engages in
11 the business of installing accessory structures.

12 22. "Listing agreement" means a document which contains the name and
13 address of the seller, a description of the unit to be listed and the terms
14 which include the period of time that the agreement is in force, the price
15 the seller is requesting for the unit, the commission to be paid to the
16 licensee and the signatures of the sellers and the licensee who obtains the
17 listing.

18 23. "Local enforcement agency" means a zoning or building department of
19 a city, town or county or its agents.

20 24. "Manufactured home" means a structure built in accordance with the
21 act.

22 25. "Manufacturer" means any person engaged in manufacturing,
23 assembling or reconstructing any unit regulated by this chapter.

24 26. "Mobile home" means a structure built prior to June 15, 1976, on a
25 permanent chassis, capable of being transported in one or more sections and
26 designed to be used with or without a permanent foundation as a dwelling when
27 connected to on-site utilities except recreational vehicles and factory-built
28 buildings.

29 27. "Purchaser" means a person purchasing a unit in good faith from a
30 licensed dealer or broker for purposes other than resale.

31 28. "Qualifying party" means a person who is an owner, employee,
32 corporate officer or partner of the licensed business and who has active and
33 direct supervision of and responsibility for all operations of that licensed
34 business.

35 29. "Reconstruction of a unit" means construction work performed for
36 the purpose of restoration or modification of a unit by changing or adding
37 structural components or electrical, plumbing or heat or air producing
38 systems.

39 30. "Recreational vehicle" means a vehicular type unit which is:

40 (a) A portable camping trailer mounted on wheels and constructed with
41 collapsible partial sidewalls which fold for towing by another vehicle and
42 unfold for camping.

43 (b) A motor home designed to provide temporary living quarters for
44 recreational, camping or travel use and built on or permanently attached to a

1 self-propelled motor vehicle chassis or on a chassis cab or van that is an
2 integral part of the completed vehicle.

3 (c) A park trailer built on a single chassis, mounted on wheels and
4 designed to be connected to utilities necessary for operation of installed
5 fixtures and appliances and has a gross trailer area of not less than three
6 hundred twenty square feet and not more than four hundred square feet when it
7 is set up, except that it does not include fifth wheel trailers.

8 (d) A travel trailer mounted on wheels, designed to provide temporary
9 living quarters for recreational, camping or travel use, of a size or weight
10 that may or may not require special highway movement permits when towed by a
11 motorized vehicle and has a trailer area of less than three hundred twenty
12 square feet. This subdivision includes fifth wheel trailers. If a unit
13 requires a size or weight permit, it shall be manufactured to the standards
14 for park trailers in A 119.5 of the American national standards institute
15 code.

16 (e) A portable truck camper constructed to provide temporary living
17 quarters for recreational, travel or camping use and consisting of a roof,
18 floor and sides designed to be loaded onto and unloaded from the bed of a
19 pickup truck.

20 31. "Salesperson" means any person who, for a salary, commission or
21 compensation of any kind, is employed by or acts on behalf of any dealer or
22 broker of manufactured homes, mobile homes or factory-built buildings to
23 sell, exchange, buy, offer or attempt to negotiate or act as an agent for the
24 sale or exchange of an interest in a manufactured home, mobile home or
25 factory-built building.

26 32. "Seller" means a natural person who enters into a listing agreement
27 with a licensed dealer or broker for the purpose of resale.

28 33. "Site development" means the development of an area for the
29 installation of the unit's or units' locations, parking, surface drainage,
30 driveways, on-site utility terminals and property lines at a proposed
31 construction site or area.

32 34. "Statutory agent" means an adult person who has been a bona fide
33 resident of this state for at least three years and has agreed to act as
34 agent for a licensee.

35 35. "Subassembly" means a prefabricated wall, floor, ceiling, roof or
36 similar combination of components.

37 36. "Title transfer" means a true copy of the application for title
38 transfer which is stamped or validated by the appropriate government agency.

39 37. "Unit" means a manufactured home, mobile home, factory-built
40 building, subassembly or accessory structures.

41 38. "Unit safety" means the performance of a unit in such a manner that
42 the public is protected against any unreasonable risk of the occurrence of
43 accidents due to the design or construction of such unit, or any unreasonable
44 risk of death or injury to the user or to the public if such accidents occur.

1 39. "Used unit" means any unit which is regulated by this chapter and
2 which has been sold, bargained, exchanged or given away from a purchaser who
3 first acquired the unit which was titled in the name of such purchaser.

4 40. "Workmanship" means a minimum standard of construction or
5 installation reflecting a journeyman quality of the work of the various
6 trades.

7 Sec. 2. Section 41-2144, Arizona Revised Statutes, is amended to read:
8 41-2144. Powers and duties of board

9 A. The board shall:

10 1. Adopt rules imposing minimum construction requirements for
11 factory-built buildings, subassemblies and components thereof ~~which shall be~~
12 ~~THAT ARE~~ reasonably consistent with nationally recognized and accepted
13 publications or generally accepted manufacturing practices pertinent to the
14 construction and safety standards for such item to be manufactured. Such
15 standards shall include minimum requirements for the safety and welfare of
16 the public.

17 2. Adopt rules imposing requirements for body and frame design and
18 construction and installation of plumbing, heating and electrical systems for
19 manufactured homes ~~which~~ ~~THAT~~ are consistent with the rules and regulations
20 for construction and safety standards adopted by the United States department
21 of housing and urban development.

22 3. Adopt rules relating to plan approvals as to requirements for the
23 design, construction, alteration, reconstruction and installation of units or
24 accessory structures as deemed necessary by the board to carry out this
25 chapter.

26 4. Establish a schedule of fees, payable by persons, licensees or
27 owners of units regulated by this chapter, for inspections, licenses,
28 permits, plan reviews, administrative functions and insignia so that the
29 total annual income derived from such fees will not be less than ninety-five
30 per cent and not more than one hundred five per cent of the anticipated
31 expenditures for the operation of the office of manufactured housing.

32 5. Adopt rules relating to the inspection throughout the state by the
33 ~~assistant~~ ~~DEPUTY~~ director of the office of manufactured housing of the
34 installation of manufactured homes, mobile homes, factory-built buildings and
35 accessory structures included as part of a sales contract for a new or used
36 mobile or manufactured home or part of an agreement to move a new or used
37 mobile or manufactured home.

38 6. Establish and maintain licensing standards and bonding requirements
39 for all manufacturers of manufactured homes, factory-built buildings and
40 subassemblies regulated pursuant to this chapter.

41 7. Establish and maintain licensing standards and bonding requirements
42 for all dealers and brokers of manufactured homes, mobile homes,
43 factory-built buildings and subassemblies thereof who sell or arrange the
44 sale of such products within this state.

1 8. Establish and maintain licensing standards and bonding requirements
2 for all installers of manufactured homes, mobile homes and accessory
3 structures and certified standards for all persons who repair these homes and
4 structures under warranties and who are not employees of the manufacturer.

5 9. Establish and maintain licensing standards for all salespersons of
6 manufactured homes, mobile homes and factory-built buildings. These
7 standards shall not include educational requirements.

8 10. Adopt rules consistent with the United States department of housing
9 and urban development procedural and enforcement regulations and enter into
10 such contracts necessary to administer the federal manufactured home
11 regulations.

12 11. Adopt rules imposing minimum fire and life safety requirements in
13 the categories of fire detection equipment, flame spread for gas furnace and
14 water heater compartments, egress windows, electrical system and gas system
15 for mobile homes entering this state.

16 12. Adopt rules for inspections and permits for minimum fire and life
17 safety requirements and establish fees for such inspections and permits for
18 mobile homes entering this state.

19 13. Adopt such other rules as the board deems necessary for the
20 director to carry out this chapter and, to the extent not authorized by other
21 provisions of this section, adopt rules as necessary to interpret, clarify,
22 administer or enforce this article and articles 2 and 4 of this chapter.

23 14. Adopt rules relating to the installation of manufactured homes,
24 mobile homes, factory-built buildings and accessory structures included as
25 part of a sales contract for a new or used mobile or manufactured home or
26 part of an agreement to move a new or used mobile or manufactured home. This
27 paragraph does not apply to:

28 (a) Single wide factory-built buildings that are used for construction
29 project office purposes and that are not used by the public.

30 (b) Storage buildings of less than one hundred sixty-eight square feet
31 that are not used by the public.

32 (c) Equipment buildings that are not used by the public.

33 15. Adopt rules relating to acceptable workmanship standards.

34 16. Adopt rules relating to issuing permits to licensees, owners of
35 units or other persons for the installation of manufactured homes, mobile
36 homes, factory-built buildings and accessory structures.

37 17. Adopt rules including a requirement that a permit shall be obtained
38 before the installation of a mobile or manufactured home.

39 18. Establish standards for the permanent foundation of a manufactured
40 home, mobile home or factory-built building.

41 B. In adopting rules pursuant to subsection A, paragraph 3, the board
42 shall consider for adoption any amendments to the codes and standards
43 referred to in subsection A, paragraphs 1 and 2. If the board adopts the
44 amendments to such codes and standards, the director shall notify the

1 manufacturers licensed pursuant to article 4 of this chapter ninety or more
2 days prior to the effective date of such amendments.

3 C. Chapter 6 of this title does not apply to the setting of fees under
4 subsection A, paragraph 4.

5 D. Rules adopted pursuant to subsection A, paragraph 14 shall be
6 standard throughout this state and may be enforced by the local enforcement
7 agencies upon installation to ensure a standard of safety. The board may
8 make an exception to the standard if, on petition by a local jurisdiction
9 participating in the installation inspection program, local conditions
10 justify the exemption or it is necessary to protect the health and safety of
11 the public. On its own motion, the board may revise or repeal any exception.

12 Sec. 3. Section 41-2147, Arizona Revised Statutes, as amended by Laws
13 2005, chapter 245, section 13, is amended to read:

14 41-2147. Director; qualifications; appointment; salary;
15 assistants; powers and duties

16 A. The governor shall appoint a director of the department pursuant to
17 section 38-211. The director shall serve at the pleasure of the governor.

18 B. The director shall be experienced in administration and the
19 technical knowledge necessary to administer this chapter.

20 C. The compensation of the director shall be as determined pursuant to
21 section 38-611.

22 D. The director with the approval of the governor shall appoint a
23 deputy director, ~~an assistant~~ A DEPUTY director of the office of manufactured
24 housing, the state fire marshal of the office of fire marshal, the state fire
25 training officer, ~~AND~~ the fire resource coordinator ~~and an assistant~~
26 ~~director of the office of administration~~, all of whom serve at the pleasure
27 of the director and are exempt from chapter 4, article 5 of this title.
28 Compensation for the ~~assistant~~ DEPUTY directors and the fire marshal shall be
29 as determined pursuant to section 38-611.

30 E. The director shall establish and have authority over the functions
31 of the office of manufactured housing, the office of state fire marshal and
32 the office of administration and shall appoint employees necessary to perform
33 the duties of articles 2, 3, ~~AND~~ 4 ~~and 6~~ of this chapter.

34 F. The director shall employ any deputies, investigators and
35 assistants and shall procure all equipment and records that are necessary to
36 enforce this chapter. With respect to the enforcement of section 41-2194,
37 the director or the director's designees are vested with the authority to
38 issue a citation in accordance with section 13-3903 or to issue a cease and
39 desist order to any violators of this chapter. When the director or the
40 director's designees conduct investigations they may receive criminal history
41 record information from the department of public safety and other law
42 enforcement entities.

43 G. In order to protect public health, safety and welfare, the director
44 may revoke or suspend a license.

1 H. The director may issue citations to licensees for alleged
2 violations of ~~any of the provisions of~~ this chapter or rules adopted pursuant
3 to this chapter.

4 I. The director, on the director's motion or on the written request of
5 the licensee, may reduce, at the director's discretion, the amount of any
6 administrative penalty imposed.

7 Sec. 4. Section 41-2152, Arizona Revised Statutes, is amended to read:
8 41-2152. Definitions

9 In this article, unless the context otherwise requires:

10 1. "~~Assistant~~ DEPUTY director" means the ~~assistant~~ DEPUTY director of
11 the office.

12 2. "Office" means the office of manufactured housing within the
13 department.

14 Sec. 5. Section 41-2153, Arizona Revised Statutes, is amended to read:
15 41-2153. Powers and duties of the deputy director; work by
16 unlicensed person; inspection agreement; permit

17 A. The ~~assistant~~ DEPUTY director under the authority and direction of
18 the director shall administer the provisions of this article and the rules
19 adopted by the board.

20 B. The ~~assistant~~ DEPUTY director shall:

21 1. Establish a state inspection and design approval bureau within the
22 office.

23 2. Enter into reciprocity agreements and compacts with other states or
24 private organizations which adopt and maintain standards of construction
25 reasonably consistent with those adopted pursuant to this article upon
26 determining that such standards are being enforced. The ~~assistant~~ DEPUTY
27 director may void such agreements upon determining such standards are not
28 being maintained.

29 3. Authorize affixment of insignia to indicate compliance with the
30 construction and installation requirements of this article.

31 4. Enter and inspect or investigate premises at reasonable times,
32 after presentation of credentials by ~~such assistant~~ THE DEPUTY director or
33 personnel of the office or under contract with the office, where units
34 regulated by this article are manufactured, sold or installed, to determine
35 if any person has violated ~~the provisions of~~ this article or the rules
36 adopted pursuant to article 1 of this chapter.

37 5. Enter into agreements with local enforcement agencies to enforce
38 the installation standards in their jurisdiction provided the ~~assistant~~
39 DEPUTY director is monitoring their performance to be consistent with the
40 installation standards of the office.

41 6. If an inspection reveals that a mobile home entering this state for
42 sale or installation is in violation of this chapter, order its use
43 discontinued and the mobile home or any portion of the mobile home vacated.
44 The order to vacate shall be served on the person occupying the mobile home
45 and copies of the order shall be posted at or on each exit of the mobile

1 home. The order to vacate shall include a reasonable period of time in which
2 the violation can be corrected.

3 7. If an inspection of a new installation of any mobile home or
4 manufactured home reveals that the natural gas or electrical connections of
5 the installation do not conform to the installation standards promulgated
6 pursuant to article 1 of this chapter and the nonconformance constitutes an
7 immediate danger to life and property, the inhabitants of the home shall be
8 notified immediately and in their absence a notice citing the violations
9 shall be posted in a conspicuous location. The ~~assistant~~ DEPUTY director may
10 order that the public service corporation, municipal corporation or other
11 entity or individual supplying the service to the unit discontinue such
12 service. If the danger is not immediate, the ~~assistant~~ DEPUTY director shall
13 allow at least twenty-four hours to correct the condition before ordering any
14 discontinuation of service.

15 8. If construction, installation, rebuilding or any other work is
16 performed in violation of this chapter or any rule adopted pursuant to this
17 chapter, order the work stopped. The order to stop work shall be served on
18 the person doing the work or on the person causing the work to be done. The
19 person served with the order shall immediately cease the work until
20 authorized by the office to continue.

21 9. Verify written complaints filed with the office by purchasers
22 within one year from the date of purchase or installation of units.
23 Complaints shall be accepted from consumers which allege violations by any
24 dealer, broker, salesperson, installer or manufacturer ~~of the provisions~~ of
25 this chapter or the rules adopted pursuant to this chapter.

26 10. Upon verification of a complaint pursuant to paragraph 9 of this
27 subsection, serve notice to the dealer, broker, salesperson, installer or
28 manufacturer that such verified complaint shall be satisfied as specified by
29 the office.

30 C. Any dealer, broker, salesperson, installer or manufacturer licensed
31 by the office shall respond within thirty days to a notice served pursuant to
32 subsection B, paragraph 10 OF THIS SECTION. Failure to respond is grounds
33 for disciplinary action pursuant to section 41-2186.

34 D. If an inspection or an investigation reveals that any work that is
35 required to be performed by a licensee was performed by an unlicensed person
36 required to be licensed pursuant to this chapter, the ~~assistant~~ DEPUTY
37 director, an employee or a person under contract with the office may cite the
38 unlicensed person. The citation may be issued and served pursuant to section
39 13-3903. The action shall be filed in the justice court in the precinct
40 where the unlicensed activity occurred.

41 E. The ~~assistant~~ DEPUTY director may enter into agreements with
42 acceptable qualified building inspection personnel or inspection
43 organizations for enforcement of inspection requirements provided the
44 ~~assistant~~ DEPUTY director is monitoring their performance to be consistent
45 with this article, rules adopted pursuant to this article and the established

1 procedures of the office. If the ~~assistant~~ DEPUTY director determines that
2 the person's or organization's performance is not consistent with this
3 article, rules adopted pursuant to this article and the established
4 procedures of the office, the person or organization may not enforce the
5 contract and the aggrieved person shall be entitled to a refund of the
6 consideration paid under the agreement.

7 F. If a mobile or manufactured home or factory-built building is
8 installed without first obtaining an installation permit, the ~~assistant~~
9 DEPUTY director shall send a written notice to the purchaser specifying that
10 a permit is required. If a permit is not obtained within thirty days of
11 receipt of the written notice, the department shall issue and serve by
12 personal service or certified mail a citation on the purchaser. Service of
13 the citation by certified mail is complete after forty-eight hours from the
14 time of deposit in the mail. On failure of the purchaser to comply with the
15 citation within twenty days of its receipt, the ~~assistant~~ DEPUTY director
16 shall file an action in the justice court in the precinct where installation
17 occurred for violation of this subsection.

18 Sec. 6. Section 41-2154, Arizona Revised Statutes, is amended to read:

19 41-2154. Submission of construction, reconstruction or
20 alteration plans by manufacturers; approval;
21 revocation

22 A. Prior to the construction of any new model of factory-built
23 building or subassembly, each manufacturer who intends to manufacture for
24 delivery or sell such unit in this state shall submit to the director for
25 approval detailed plans of each model and shall have obtained such approval.

26 B. Prior to reconstruction of any factory-built building, including
27 those for which the director has not approved plans before construction, the
28 licensee shall submit to the director for approval detailed plans of the
29 factory-built building that indicate conformance with this state's adopted
30 codes as certified by an engineer who is registered pursuant to title 32,
31 chapter 1.

32 C. Prior to installation of a factory-built building or accessory
33 structure, each licensee who intends to accomplish the construction shall
34 submit to the director for approval detailed plans for each project and shall
35 obtain the director's approval.

36 D. The office or a third party inspector who is authorized by the
37 ~~assistant~~ DEPUTY director to verify compliance with the approved plans shall
38 inspect the factory-built building.

39 E. A plan approval may be immediately suspended by the written notice
40 of the ~~assistant~~ DEPUTY director if the ~~assistant~~ DEPUTY director has
41 reasonable cause to believe that the licensee is not complying with the plan
42 as approved or that the licensee has used inferior materials or workmanship
43 in construction. This notice shall be served by personal service to an
44 in-state licensee and by certified mail to an out-of-state licensee. Service

1 of process by certified mail is complete after forty-eight hours from the
2 time of deposit in the mail.

3 Sec. 7. Section 41-2172, Arizona Revised Statutes, is amended to read:

4 41-2172. Definitions

5 In this article, unless the context otherwise requires:

6 1. "~~Assistant~~ DEPUTY director" means the ~~assistant~~ DEPUTY director of
7 the office OF MANUFACTURED HOUSING.

8 2. "Office" means the office of administration within the department.

9 Sec. 8. Section 41-2173, Arizona Revised Statutes, is amended to read:

10 41-2173. General powers and duties

11 The director shall appoint the ~~assistant~~ DEPUTY director ~~of the office~~
12 ~~of administration~~ who shall, under the authority and direction of the
13 director:

14 1. Administer the provisions of this article.

15 2. Provide personnel, clerical, accounting, fiscal and budget support
16 for the department and other functions designated by the director.

17 3. Establish licensing and regulation procedures in accordance with
18 ~~the provisions of~~ this article and issue certification documents for
19 compliance with the licensing and bonding requirements of this article.

20 4. Issue certification insignia to indicate compliance with the
21 construction and installation requirements of article 2 of this chapter.

22 5. Provide for investigative support, enforcement, penalty procedures,
23 hearings and rehearings in accordance with ~~the provisions of~~ this chapter.

24 6. Establish field offices for the department as required.

25 7. Issue permits to licensees, owners of units and other persons for
26 the installation of manufactured homes, mobile homes and factory-built
27 buildings and the rehabilitation of mobile homes.

28 Sec. 9. Section 41-2174, Arizona Revised Statutes, is amended to read:

29 41-2174. Budget; disposition of revenues; report

30 A. The ~~assistant~~ DEPUTY director shall annually prepare and submit a
31 budget estimate and appropriation request for the department pursuant to
32 title 35, chapter 1.

33 B. At least once each week the ~~assistant~~ DEPUTY director shall
34 deposit, pursuant to sections 35-146 and 35-147, all monies received by the
35 department pursuant to this chapter in the state general fund.

36 Sec. 10. Section 41-2175, Arizona Revised Statutes, is amended to
37 read:

38 41-2175. Qualifications and requirements for license

39 A. A manufacturer, dealer, broker, salesperson or installer license
40 shall be issued by the ~~assistant~~ DEPUTY director.

41 B. The ~~assistant~~ DEPUTY director shall:

42 1. Classify and qualify applicants for a license.

43 2. Conduct such investigations as the ~~assistant~~ DEPUTY director deems
44 necessary.

1 3. Establish and administer written examinations for the applicable
2 class license.

3 C. The ~~assistant~~ DEPUTY director may establish experience requirements
4 for installers of manufactured homes, mobile homes and accessory structures.

5 D. To obtain a license pursuant to this article, the applicant shall
6 submit to the ~~assistant~~ DEPUTY director a notarized application on forms
7 prescribed by the office together with the required license fee. Such
8 application shall contain the following information:

9 1. A designation of the classification of license sought by the
10 applicant.

11 2. The name, birth date and address of an individual applicant.

12 3. If the applicant is a partnership, the name, birth date and address
13 of all partners with a designation of any limited partners.

14 4. If the applicant is a corporation, association or other
15 organization, the names, birth dates and addresses of the president,
16 vice-president, secretary and treasurer.

17 5. For all licenses, except those for salespersons, the name, birth
18 date and address of the qualifying party. The qualifying party must reside
19 within the state of the principal place of the licensee's business and shall
20 not act in the capacity of a qualifying party for more than one license in
21 the same classification.

22 6. If the applicant is a corporation, evidence that the corporation is
23 in good standing with the Arizona corporation commission.

24 7. Whether the owner, if the applicant is a sole proprietorship, all
25 partners, if the applicant is a partnership, all officers, if the applicant
26 is a corporation or other type of association, the general partner, if the
27 applicant is a limited partnership, or the individual, if the applicant is a
28 salesperson, has ever been charged or convicted of a felony, or has ever
29 received an adverse final decision in a civil action alleging fraud or
30 misrepresentation, and, if so, the nature of the action and the final
31 disposition of the case.

32 8. For corporations, the name and address of a statutory agent
33 appointed by the licensee on whom legal notices, summonses or other processes
34 may be served, which service shall be deemed personal service upon the
35 licensee.

36 9. If it is an application for a salesperson's license, the applicant
37 shall designate an employing dealer or broker and the application shall
38 include the signature of the qualifying party or the qualifying party's
39 designee.

40 10. Other information as the ~~assistant~~ DEPUTY director may deem
41 necessary.

42 E. Prior to the issuance of any license pursuant to this article, the
43 owner, if the applicant is a sole proprietorship, all partners, if the
44 applicant is a partnership, the general partner, if the applicant is a
45 limited partnership, the president, vice-president, secretary, and treasurer,

1 if the applicant is a corporation or other type of association, the
2 individual, if the applicant is a salesperson, and the qualifying party shall
3 be of good character and reputation and shall submit a fingerprint card for
4 background analysis. Lack of good character and reputation may be
5 established by showing that such person has committed any act which, if
6 committed by any licensee, would be grounds for suspension or revocation of
7 such license.

8 F. To obtain a license pursuant to this article, a person shall not
9 have had a license refused or revoked within one year prior to the date of
10 the application nor have engaged in the business without first having been
11 licensed nor shall a person act as a licensee between the filing of the
12 application and actual issuance of the license. As used in this subsection,
13 "person" means an applicant, an individual, a qualifying party, any partner
14 of a partnership or any officer, director, qualifying party or owner of forty
15 per cent or more of the stock or beneficial interest of a corporation.

16 G. Prior to issuance of a dealer, broker or installer license, the
17 qualifying party, in addition to meeting the requirements provided in
18 subsection D, shall successfully show, by written examination within three
19 attempts, qualification in the kind of work or business in which the
20 applicant proposes to engage.

21 H. No license shall be issued to a minor or to any partnership in
22 which one of the partners is a minor.

23 I. Every salesperson who holds an active license shall maintain on
24 file with the office a current residence address and shall notify the office
25 within five working days of any change of address, of any discontinued
26 employment, and where, if anywhere, the salesperson is currently working.

27 J. The license of a salesperson who is no longer employed by the
28 dealer of record is deemed inactive, and the salesperson shall turn in the
29 license to the office until the salesperson is employed by another dealer and
30 a written notification of the change has been received by the office. On
31 notification, the office shall return the license to the salesperson.

32 Sec. 11. Section 41-2176, Arizona Revised Statutes, is amended to
33 read:

34 41-2176. Issuance of a license

35 A. Upon receipt by the ~~assistant~~ DEPUTY director of the nonrefundable
36 fee required by this article and an application furnishing complete
37 information as required by the ~~assistant~~ DEPUTY director and upon the
38 applicant taking and passing the applicable examination required by section
39 41-2175, the ~~assistant~~ DEPUTY director shall issue a license to the
40 applicant, pending completion of the background analysis, permitting the
41 applicant to engage in business pursuant to this article for one year.

42 B. Pursuant to the agreement for conditional license, the applicant
43 shall agree to a revocation of the conditional license if it appears, on
44 review of the background analysis, that the applicant has misrepresented its
45 background. The applicant shall also agree to waive any right the applicant

1 may have to a stay of the effectiveness of any order of revocation of the
2 conditional license, the right to notice of hearing and the right to a
3 hearing before the revocation of the license.

4 C. The agreement for conditional license does not prohibit the
5 applicant from making a written demand for a hearing on the order of
6 revocation pursuant to chapter 6, article 10 of this title. Pending the
7 hearing, the applicant shall not continue to transact business under the
8 conditional license.

9 D. On completion of the background analysis, the director may issue
10 either a permanent or a probationary license, depending on the results of the
11 background analysis.

12 E. Licenses issued pursuant to this article and any annual renewals
13 shall be signed by the ~~assistant~~ DEPUTY director or the ~~assistant~~ DEPUTY
14 director's designated representative and by the licensee. The license is
15 nontransferable and satisfactory evidence of the possession shall be
16 exhibited by the licensee upon demand. The license held by the licensee
17 shall be posted in a conspicuous place on the premises where any business is
18 being performed. A license card shall be carried by the person doing the
19 work away from the premises where the license is posted. The license number
20 shall be written on any contract entered into by the licensee.

21 F. If an application for a license is denied or if the applicant fails
22 to supply complete and correct required information within ninety days or
23 fails to pass the required written examination within ninety days after
24 filing or if an application for renewal is not completed by the expiration
25 date or if any applicant requiring examination after having been notified by
26 letter of the date to appear fails to appear for the examination within
27 ninety days from the date of filing the application, the fee paid by the
28 applicant upon filing the application is forfeited and the application is
29 terminated. A reapplication for a license shall be accompanied by the fee
30 prescribed by the ~~assistant~~ DEPUTY director.

31 G. If, before the issuance of the license, information brought to the
32 attention of the ~~assistant~~ DEPUTY director concerning the qualifications of
33 the applicant is such that in the ~~assistant~~ DEPUTY director's discretion it
34 may be proper to deny the license, the ~~assistant~~ DEPUTY director may notify
35 the applicant that the license is denied and that the applicant may request
36 in writing a hearing if the applicant so desires.

37 H. The licensee may not engage in the sale of units, either new or
38 used, unless the licensee maintains an office where the records are available
39 for inspection and the location is listed on the license application as the
40 principal place of business.

41 Sec. 12. Section 41-2177, Arizona Revised Statutes, is amended to
42 read:

43 41-2177. Renewal of licenses; license status

44 A. Licenses issued under this article shall expire one year from the
45 date of issuance. An application for renewal of any current license with

1 evidence of a valid bond or cash deposit when accompanied by the required fee
2 and received by the ~~assistant~~ DEPUTY director before the expiration date
3 shall authorize the licensee to operate until actual issuance of the renewal
4 license for the ensuing year.

5 B. A license which expires may be reactivated and renewed within one
6 year of its expiration by filing the required renewal application, signed by
7 the licensee or qualifying party for a business licensee, evidence of a valid
8 bond and payment of a fee of one hundred twenty-five per cent of the amount
9 required for that license class. When a license has been expired for more
10 than one year for failure to renew, a new application for license shall be
11 made and a new license issued pursuant to this article. If the license has
12 been expired for more than one year, the fee required shall be two hundred
13 per cent of the fee required for that license class.

14 C. An applicant for renewal of a license issued pursuant to this
15 article shall not be required to take a written examination.

16 D. A license is not transferable. Any change in the legal entity of a
17 ~~license~~ LICENSEE that includes any change in the ownership of a sole
18 proprietorship, ~~OR~~ a partner of a partnership or ~~IN~~ the creation of a new
19 corporate entity requires a new license.

20 E. A license may be cancelled on the written request of the owner of a
21 sole proprietorship, a partner of a partnership or, in the case of a
22 corporation, any person with written evidence of his authority to request the
23 cancellation. A salesperson's license may be cancelled on the written
24 request of the salesperson. The director may refuse to accept voluntary
25 cancellation of a license if good cause may exist for disciplinary action.

26 F. If possible, the licensee shall notify the director in writing of
27 the disassociation of a qualifying party before the action, and in any event
28 no later than five business days after the action. The licensee shall also
29 notify the director as to who will be temporarily responsible for the
30 operation of the business. The absence of a written designated qualifying
31 party for sixty days is grounds for suspension of the license. If a person
32 ceases to be the qualifying party for a licensee, the person shall notify the
33 office within five days.

34 G. An application for a new qualifying party shall include the
35 completion of the prescribed forms, fingerprints and testing, if applicable,
36 in accordance with sections 41-2175 and 41-2176.

37 H. A licensee may request the ~~assistant~~ DEPUTY director, on forms
38 prescribed by the ~~assistant~~ DEPUTY director, to inactivate ~~his~~ THE LICENSEE'S
39 current license for a period of not more than two years. In the absence of
40 any disciplinary proceeding or disciplinary suspension and on payment of
41 reasonable fees determined by the board the ~~assistant~~ DEPUTY director may
42 issue an inactive license certificate to the licensee if the licensee has
43 turned in his license. The inactive license certificate may consist of an
44 endorsement on the licensee's license stating that the license is inactive.
45 The ~~assistant~~ DEPUTY director may not refund any of the license renewal fee

1 which a licensee paid before requesting inactive status. A licensee's
2 license which is not suspended or revoked and is inactive shall be
3 reactivated as an active license on payment of the current year's renewal fee
4 and thirty days' written notice to the ~~assistant~~ DEPUTY director. No
5 examination may be required to reactivate an inactive license. If the
6 license is not reactivated within two years, a new application for licensing
7 must be made and the new license issued pursuant to this chapter. No
8 licensee may inactivate the license more than once. The holder of an
9 inactive license shall not work as a licensee until his license is
10 reactivated as an active license. The inactive status of a licensee's
11 license does not bar any disciplinary action by the ~~assistant~~ DEPUTY director
12 against a licensee for any of the grounds stated in this chapter.

13 Sec. 13. Section 41-2179, Arizona Revised Statutes, is amended to
14 read:

15 41-2179. Bonds, cash deposits; requirements; fund

16 A. Before granting an original license, the ~~assistant~~ DEPUTY director
17 shall require of the applicant, except an applicant for salesperson or
18 broker of manufactured homes, mobile homes or factory-built buildings
19 designed for use as residential buildings, a surety bond in a form acceptable
20 to the ~~assistant~~ DEPUTY director or a cash deposit pursuant to this section.
21 A separate bond or cash deposit shall be required for each branch location of
22 any licensed manufacturer or installer. No license shall be renewed unless
23 the applicant's surety bond or cash deposit is in full force and effect. A
24 change of location of a licensee's principal place of business requires a
25 rider or endorsement to the existing bond and payment of the administrative
26 function fee. The rider or endorsement shall indicate the new location and
27 acceptance of claims for the previous location.

28 B. The bonds or cash deposit shall be in amounts prescribed by the
29 board.

30 C. The surety bonds shall be executed by the applicant as principal
31 with a corporation duly authorized to transact surety business in this state.
32 Evidence of a surety bond shall be submitted to the ~~assistant~~ DEPUTY director
33 in a form prescribed by the ~~assistant~~ DEPUTY director. The applicant may in
34 the alternative establish a cash deposit in the amount of the bond with the
35 state treasurer pursuant to the rules adopted by the ~~assistant~~ DEPUTY
36 director. The bond funds shall be deposited, pursuant to sections 35-146 and
37 35-147, in a special account to be known as the consumer recovery fund. The
38 state treasurer shall invest and divest monies in the fund as provided by
39 section 35-313, and monies earned from investment shall be credited to the
40 fund. Such cash deposits may be withdrawn, if there are no outstanding
41 claims against them, two years after the termination of the license in
42 connection with which the cash is deposited. The cash deposit may be
43 withdrawn two years after the filing of a commercial surety bond as a
44 replacement to the cash deposit.

1 D. The bond or deposit required by this section shall be in favor of
2 the state for the benefit of any person covered by this subsection. The bond
3 or deposit shall be subject to claims by:

4 1. Any consumer of a unit regulated by this chapter who enters into an
5 agreement with any licensee, except a salesperson or broker of manufactured
6 homes, mobile homes or factory-built buildings designed for use as
7 residential buildings, and is damaged by the failure of the principal to
8 perform a sales or installation agreement or to perform repairs under a
9 warranty.

10 2. The ~~assistant~~ DEPUTY director, if the principal fails to pay any of
11 the fees or costs which the principal owes the office.

12 E. Any person claiming against the bond or deposit, except the
13 department, may maintain an action against the principal and the surety.
14 Such principal's bond or deposit may be sued upon in successive actions until
15 the full amount is exhausted. No suit may be commenced on the bond or
16 deposit after the expiration of two years after the date of sale or
17 installation of the unit, whichever is later, on which the suit is based,
18 except that the time for purposes of the claim for fraud shall be measured
19 pursuant to section 12-543.

20 F. The surety bond or deposit shall be continuous in form and shall
21 contain the condition that the total aggregate liability of the surety or
22 depository for all claims shall be limited to the face amount of the bond or
23 depository irrespective of the number of years the bond or depository is in
24 force. If the corporate surety desires to make payment without awaiting
25 court action, the amount of the bond filed shall be reduced to the extent of
26 any payment or payments made by the corporate surety in good faith. Any such
27 payments shall be based on priority of written claims received by the
28 corporate surety prior to court action. The surety bond or depository shall
29 be continuous as long as the corporate surety or the depositor maintains the
30 face amount of the bond or deposit. Failure to maintain the face amount of
31 the bond or deposit constitutes a suspension of such license until the face
32 amount of the bond or deposit is restored.

33 G. The corporate surety shall notify the ~~assistant~~ DEPUTY director of
34 the intent of the principal to cancel the bond and of any monies paid from
35 the bond. Upon receipt by the ~~assistant~~ DEPUTY director of notice to cancel
36 a bond by any corporate surety, the ~~assistant~~ DEPUTY director shall
37 immediately notify the licensee who is the principal on the bond of the
38 effective date of cancellation of the bond and that the licensee shall
39 furnish a like bond or make cash deposit on or before the effective date of
40 cancellation or the license shall be suspended. Notice to the licensee shall
41 be by certified mail postage fully prepaid, addressed to the licensee's last
42 address of record with the office. The license shall be suspended on the
43 date the bond is canceled unless a replacement bond or cash deposit in lieu
44 of a bond is on file with the ~~assistant~~ DEPUTY director.

1 H. The director and ~~assistant~~ DEPUTY director shall have no personal
2 liability for the performance of duties relating to the bond and cash deposit
3 requirements of this section if such duties are performed in good faith.

4 Sec. 14. Section 41-2180, Arizona Revised Statutes, is amended to
5 read:

6 41-2180. Trust and escrow requirements; rules; exemptions

7 A. Each dealer or broker who is licensed pursuant to this article and
8 who sells manufactured homes, mobile homes or factory-built buildings
9 designed for use as residential dwellings shall maintain a trust account or
10 an escrow account with a financial institution or escrow agent located in
11 this state and shall deposit all earnest money received for the sale of
12 manufactured homes, mobile homes or factory-built buildings designed for use
13 as residential dwellings in such account. The department shall conduct an
14 audit of each dealer's or broker's trust or escrow account at least once
15 every two years.

16 B. All dealers or brokers shall notify the ~~assistant~~ DEPUTY director
17 in writing when the trust or escrow account has been established by
18 indicating the name and number of the account and the name and location of
19 the financial institution used.

20 C. The dealer or broker, in writing, shall authorize the depository to
21 release any and all information relative to trust or escrow accounts to the
22 ~~assistant~~ DEPUTY director or his agent, employee or deputy.

23 D. The dealer's or broker's earnest money receipt book shall reflect
24 all earnest monies received and shall be at the minimum in duplicate and
25 consecutively numbered.

26 E. All earnest monies shall be deposited in the escrow account or
27 trust fund account no later than the close of the second banking business day
28 after receipt.

29 F. A dealer or broker may deposit and maintain up to two hundred
30 dollars in the trust account to offset service charges that may be assessed
31 by the financial institutions.

32 G. Every deposit into a trust account shall be made with a deposit
33 slip which identifies each transaction as follows:

- 34 1. The amount of deposit.
- 35 2. The names of all parties involved in the transaction.

36 All receipts for monies deposited in escrow shall be made accountable by
37 containing the same information.

38 H. A complete record shall be retained by the dealer's or broker's
39 office of all earnest monies received. The record shall contain provisions
40 for entering:

- 41 1. The amount received.
- 42 2. From whom the money was received.
- 43 3. The date of receipt.
- 44 4. The place of deposit.
- 45 5. The date of deposit.

1 6. The daily balance of the trust fund account deposit of each
2 transaction.

3 7. When the transaction has been completed.

4 8. Date and payment for all goods and services the dealer has
5 contracted to provide.

6 I. All earnest money deposited in the trust or escrow account shall be
7 held in such account until one of the following is completed:

8 1. An application for title transfer has been made.

9 2. The transaction involved is consummated or terminated and a
10 complete accounting is made.

11 J. Upon completion of subsection I of this section the earnest money
12 deposit shall be conveyed to the lending institution or the dealer, broker,
13 purchaser, seller, manufacturer or lienholder, whichever is applicable.

14 K. The dealer or broker shall retain true copies of the purchase
15 agreements, earnest money receipts, depository receipts, evidence of delivery
16 documents and evidence of consummation of sale or termination of sale for a
17 period of three years.

18 L. The deposits referred to in this section shall not be utilized for
19 any purpose other than the transaction for which they were provided.

20 M. Notwithstanding any other provision of this section, before an
21 event listed under subsection I of this section is completed, a licensed
22 dealer may release trust account earnest monies to pay for flooring or
23 inventory for the unit that is the subject of the transaction for which the
24 earnest monies were provided. Either a licensed dealer or broker may release
25 trust account earnest monies to pay other lawfully imposed interim loan
26 amounts and charges imposed by a financial institution or other bona fide
27 lender on the unit that is the subject of the transaction for which the
28 earnest monies were provided. The dealer or broker shall not make any
29 payment out of trust account monies pursuant to this subsection unless done
30 in compliance with all of the following:

31 1. The payment is made no more than ten business days prior to the
32 completion date pursuant to subsection I [OF THIS SECTION](#).

33 2. The payment is made directly to the financial institution or other
34 bona fide lender.

35 3. The payment is recorded in the dealer's or broker's records under
36 this section and documented by a receipt, a payment record or any other
37 evidence from the financial institution or lender.

38 4. If the transaction is terminated, the dealer or broker replaces the
39 amount of the payment in the trust account within three business days after
40 receiving written notification of the termination.

41 This subsection does not affect any other rights or obligations between the
42 purchaser and the licensed dealer or broker.

43 N. The board shall adopt separate rules for dealer trust and escrow
44 accounts and broker trust and escrow accounts. At a minimum, these rules
45 shall contain trust and escrow account requirements for the following:

- 1 1. Record keeping.
- 2 2. Administration.
- 3 3. Service fees or charges.
- 4 4. Deposits.
- 5 5. Advances or payments out of trust and escrow accounts.
- 6 6. Closing or termination of sales transactions.
- 7 7. Auditing or investigation of trust or escrow account complaints.
- 8 0. This section shall not apply to a real estate broker or salesperson
- 9 licensed pursuant to section 32-2122 and pursuant to this article when the
- 10 unit is sold in conjunction with real estate.

11 Sec. 15. Section 41-2181, Arizona Revised Statutes, is amended to

12 read:

13 41-2181. Complaints; citation; failure to respond; hearing

14 A. The office shall issue a citation upon failure to respond or upon

15 the verified written complaint of a purchaser pursuant to section 41-2153,

16 subsection B, paragraph 9 and shall issue a citation directing the licensee,

17 within ten days after service of the citation upon the licensee, to appear by

18 filing with the office a verified answer to the complaint showing cause why

19 the license should not be revoked or suspended. The ~~assistant~~ DEPUTY

20 director, after conducting an investigation pursuant to section 41-2186, may

21 issue a citation on the ~~assistant~~ DEPUTY director's own initiative.

22 B. Failure of the licensee to answer shall be deemed an admission by

23 the licensee of the cited complaint or failure to respond as charged in the

24 citation, and the office may suspend or revoke such license without a

25 hearing.

26 C. A person served with a citation or with a cease and desist order by

27 the state fire marshal may request a hearing pursuant to chapter 6, article

28 10 of this title.

29 Sec. 16. Section 41-2182, Arizona Revised Statutes, is amended to

30 read:

31 41-2182. Cosmetic complaints; process; walk-through; definition

32 A. Notwithstanding sections 41-2153 and 41-2181, a purchaser of a new

33 manufactured home shall file a complaint concerning cosmetic, superficial or

34 minor matters relating to the manufactured home no more than one hundred

35 twenty days after the date of installation or the designated cosmetic

36 complaint date prescribed in section 41-2182.01.

37 B. The ~~assistant~~ DEPUTY director ~~of the office of manufactured housing~~

38 shall not process or verify a complaint described in subsection A of this

39 section if the complaint is filed more than one hundred twenty days after the

40 date of installation or the designated cosmetic complaint date prescribed in

41 section 41-2182.01, unless the ~~assistant~~ DEPUTY director finds, after written

42 notice to the interested parties, that the complaint involves major or

43 structural matters relating to the manufactured home.

1 C. The board shall adopt rules establishing procedures for complaints
2 filed pursuant to this section, including rules for determining the date of
3 installation of a new manufactured home.

4 D. This section does not apply if, within thirty days after the date
5 of installation or the designated cosmetic complaint date prescribed in
6 section 41-2182.01, the manufacturer or dealer of the new manufactured home
7 has not conducted a walk-through of the home with the purchaser or the
8 purchaser's representative and has not completed a walk-through checklist on
9 a form approved by the board. The walk-through checklist form shall contain
10 a notice to the purchaser, located immediately above the signature lines and
11 in bold print, advising the purchaser that all cosmetic, superficial or minor
12 matters found during the walk-through should be listed on the form and that
13 the complaint filing period for cosmetic, superficial or minor matters is one
14 hundred twenty days from either the date of installation of the home or the
15 designated cosmetic complaint date prescribed in section 41-2182.01.

16 E. For the purposes of this section, "cosmetic, superficial or minor
17 matters" means any defect or condition that renders a part of the home not
18 fit for its intended, expected or ordinary use or appearance, including
19 defects or conditions that involve the appearance of the home's structural,
20 electrical, plumbing, mechanical or gas systems. Cosmetic, superficial or
21 minor matters do not include defects or conditions involving the performance
22 of the home's structural, electrical, plumbing, mechanical or gas systems.

23 Sec. 17. Section 41-2186, Arizona Revised Statutes, is amended to
24 read:

25 41-2186. Grounds for disciplinary action

26 The ~~assistant~~ DEPUTY director may, upon the ~~assistant~~ DEPUTY director's
27 own motion, and shall, upon the complaint in writing of any person, cause to
28 be investigated by the office the acts of any manufacturer, dealer, broker,
29 salesperson or installer licensed with the office and may temporarily suspend
30 or permanently revoke any license issued under this article, impose an
31 administrative penalty or place on probation any licensee, if the holder of
32 the license, while a licensee, is guilty of or commits any of the following
33 acts or omissions:

34 1. Failure in any material respect to comply with ~~the provisions of~~
35 this article or article 2 of this chapter.

36 2. Violation of any rule that is adopted by the board and that
37 pertains to the construction of any unit or of any rule that is adopted by
38 the board and that is necessary to effectively carry out the ~~provisions and~~
39 intent of this article, article 2 of this chapter or the laws of the United
40 States or of this state.

41 3. Misrepresentation of a material fact by the applicant in obtaining
42 a license.

43 4. Aiding or abetting an unlicensed person or knowingly combining or
44 conspiring with an unlicensed person to evade ~~the provisions of~~ this article
45 or article 2 of this chapter, or allowing one's license to be used by an

- 1 unlicensed person or acting as an agent, partner or associate of an
2 unlicensed person with intent to evade ~~the provisions of~~ this article or
3 article 2 of this chapter.
- 4 5. Conviction of a felony.
- 5 6. The doing of a wrongful or fraudulent act by a licensee which
6 relates to this article or article 2 of this chapter.
- 7 7. Departure from or disregard of any code or any rule adopted by the
8 board.
- 9 8. Failure to disclose or subsequent discovery by the office of facts
10 which, if known at the time of issuance of a license or the renewal of a
11 license, would have been grounds to deny the issuance or renewal of a
12 license.
- 13 9. Knowingly entering into a contract with a person not duly licensed
14 in the required classification for work to be performed for which a license
15 is required.
- 16 10. Acting in the capacity of a licensee under any license issued under
17 this article in a name other than as set forth upon the license.
- 18 11. Acting as a licensee while the license is under suspension.
- 19 12. Failure to respond relative to a verified complaint after notice of
20 such complaint.
- 21 13. Violation of title 28, chapter 10 or rules adopted pursuant to
22 title 28, chapter 10, except for the licensing requirements of sections
23 28-4334, 28-4335, 28-4361, 28-4362, 28-4364, 28-4401 and 28-4402.
- 24 14. False, misleading or deceptive sales practices by a licensee in the
25 sale or offer of sale of any unit regulated by this article or article 2 of
26 this chapter.
- 27 15. Failure to remit the consumer recovery fund fee pursuant to section
28 41-2189.
- 29 16. Acting as a salesperson while not employed by a dealer or broker.
- 30 17. As a salesperson, representing or attempting to represent a dealer
31 or broker other than by whom the salesperson is employed.
- 32 18. Failure by a salesperson to promptly place all cash, checks and
33 other items of value and any related documents received in connection with a
34 sales transaction in the care of the employing dealer or broker.
- 35 19. Failure to provide all agreed on goods and services.
- 36 20. Failure to manufacture or install in a workmanlike manner all
37 subassemblies, units and accessory structures which are suitable for their
38 intended purpose.
- 39 21. Failure of the licensee to work only within the scope of the
40 license held.
- 41 22. An action by a licensee, who is also a mobile home park owner,
42 manager, agent or representative, that restricts a resident's or prospective
43 resident's access to buyers, sellers or licensed dealers or brokers in
44 connection with the sale of a home or the rental of a space, that the
45 department finds constitutes a violation of section 33-1434, subsection B or

1 section 33-1452, subsection E or that violates any law or regulation relating
2 to fair housing or credit practices.

3 Sec. 18. Section 41-2190, Arizona Revised Statutes, is amended to
4 read:

5 41-2190. Recovery from fund; claim against licensee;
6 subrogation; appeal; statute of limitations

7 A. If any consumer who is buying or selling the consumer's home uses
8 the services of a licensed dealer or broker of manufactured homes, mobile
9 homes or factory-built buildings designed for use as residential buildings
10 and is damaged as a result of an act or omission by a licensed dealer or
11 broker of manufactured homes, mobile homes or factory-built buildings
12 designed for use as residential buildings which constitutes a violation of
13 section 41-2180, or rules adopted pursuant to that section, that consumer may
14 file a claim with the office for payment from the consumer recovery fund.
15 The claim shall be verified by the office.

16 B. If any consumer of manufactured homes, mobile homes or
17 factory-built buildings designed for use as residential buildings is damaged
18 by the failure of the principal to perform a sales agreement or to perform
19 repairs under a warranty, the consumer may file a claim with the office for
20 payment from the consumer recovery fund. The claim shall be verified by the
21 office.

22 C. Upon verification of the claim for payment, the ~~assistant~~ DEPUTY
23 director shall provide for a hearing pursuant to chapter 6, article 10 of
24 this title.

25 D. The board shall pay from the consumer recovery fund whatever sum
26 the administrative law judge finds payable upon the claim. A decision
27 granting a claim shall include an order suspending the license of the
28 licensee upon whose account the claim was filed. Such a license shall remain
29 on suspension until the licensee has repaid in full, plus interest at the
30 rate of ten per cent per year, the amount paid from the consumer recovery
31 fund on the licensee's account.

32 E. Any party aggrieved by the administrative law judge's decision may
33 apply for a rehearing by filing with the ~~assistant~~ DEPUTY director a motion
34 in writing pursuant to chapter 6, article 10 of this title. The filing of a
35 motion for rehearing shall suspend the operation of the administrative law
36 judge's order pending the decision of the director upon the rehearing.

37 F. Except as provided in section 41-1092.08, subsection H, any person
38 aggrieved by a final administrative decision may seek judicial review
39 pursuant to title 12, chapter 7, article 6.

40 G. The consumer recovery fund has a claim against the licensee on
41 whose account a claim was granted for the amount paid plus costs, necessary
42 expenses and reasonable attorney fees.

43 H. The ~~assistant~~ DEPUTY director is subrogated to the claim of the
44 consumer recovery fund against the bond and other assets of the licensee.

1 The ~~assistant~~ DEPUTY director shall deposit any amount recovered into the
2 consumer recovery fund.

3 I. If, at any time, the money deposited in the consumer recovery fund
4 is insufficient to satisfy any duly authorized claim or portion of a claim,
5 the board shall, when sufficient money has been deposited in the consumer
6 recovery fund, satisfy such unpaid claims or portions of claims in the order
7 that such claims or portions of claims were originally filed.

8 J. A consumer pursuant to subsection A or B of this section is barred
9 from commencing an application for payment from the consumer recovery fund
10 later than two years from the date of sale or date of installation, whichever
11 is later.

12 Sec. 19. Section 41-2191, Arizona Revised Statutes, is amended to
13 read:

14 41-2191. False statement; classification

15 A person or his agent who knowingly files with the ~~assistant~~ DEPUTY
16 director any notice, statement or other document required under section
17 ~~41-2188~~, 41-2189 or 41-2190 which is false or untrue or contains any material
18 misstatement of fact is guilty of a class 2 misdemeanor.

19 Sec. 20. Section 41-2193, Arizona Revised Statutes, is amended to
20 read:

21 41-2193. Enforcement powers of deputy director and office
22 personnel; civil and administrative penalties

23 A. The ~~assistant~~ DEPUTY director, personnel of the office and
24 personnel under contract to the office, upon presentation of credentials,
25 shall be permitted to enter and inspect premises where units regulated by
26 this chapter are manufactured, sold or installed as the ~~assistant~~ DEPUTY
27 director may deem appropriate to determine if any person has violated ~~the~~
28 ~~provisions of~~ this chapter. No person licensed by the office may refuse to
29 admit the ~~assistant~~ DEPUTY director or the personnel of the office or
30 personnel under contract if the proper credentials are presented and the
31 inspection is made at a reasonable time.

32 B. If the ~~assistant~~ DEPUTY director has reasonable cause to believe a
33 unit is being offered for sale by a party required to be licensed but not
34 licensed as a dealer or broker by the office or is in violation of ~~any~~
35 ~~provision of~~ this chapter, or the rules, regulations or standards promulgated
36 pursuant to this chapter, the office shall serve upon the manufacturer,
37 dealer, broker or installer a notice of violation which may be affixed to the
38 unit in violation and, if affixed to the unit, shall not be removed by anyone
39 without the authorization of the office.

40 C. If there is reasonable cause to believe, from information furnished
41 to the ~~assistant~~ DEPUTY director or from an investigation instituted by the
42 ~~assistant~~ DEPUTY director, that any person is engaged in a business regulated
43 by this article without being licensed as required by law, the ~~assistant~~
44 DEPUTY director shall issue and serve upon the person, by certified mail, a
45 cease and desist order requiring the person immediately, upon receipt of the

1 notice, to cease and desist from engaging in such business. Upon failure of
2 such person to comply with the order, the ~~assistant~~ DEPUTY director shall
3 file an action in the superior court in Maricopa county restraining and
4 enjoining the person from engaging in such business. The court in the action
5 shall proceed as in other actions for injunctions.

6 D. If in the judgment of the ~~assistant~~ DEPUTY director any person has
7 engaged, or is about to engage, in any acts or practices which constitute, or
8 will constitute, a violation of ~~any provision of~~ this chapter, the rules,
9 regulations or standards promulgated pursuant to this chapter or an order
10 issued pursuant to this chapter, the DEPUTY director may make application to
11 the appropriate court for an order enjoining such acts or practices. Upon a
12 showing by the ~~assistant~~ DEPUTY director that such person has engaged in, or
13 is about to engage in, any such acts or practices, an injunction, restraining
14 order or such other order as may be appropriate shall be granted by such
15 court without bond. On a showing by the ~~assistant~~ DEPUTY director that a
16 licensee has wrongfully withdrawn, or is about to wrongfully withdraw, funds
17 required to be held in the licensee's trust account, an injunction,
18 restraining order or such other order as may be appropriate to prevent a
19 licensee from wrongfully withdrawing trust account funds shall be granted by
20 the court. Upon granting a permanent injunction, the court may impose a
21 civil penalty not exceeding one thousand dollars for each violation.

22 E. In any investigation, proceeding or hearing which the ~~assistant~~
23 DEPUTY director may institute, conduct or hold under this article, the
24 ~~assistant~~ DEPUTY director, or a representative designated by the ~~assistant~~
25 DEPUTY director, may administer oaths, certify to official acts, issue
26 subpoenas for attendance of witnesses and production of books, papers and
27 records and exercise the same powers in this regard as conferred upon public
28 officers by the provisions of section 12-2212.

29 F. After any hearing which the ~~assistant~~ DEPUTY director may
30 institute, conduct or hold under this article, the ~~assistant~~ DEPUTY director
31 or a representative designated by the ~~assistant~~ DEPUTY director may impose an
32 administrative penalty in an amount of not to exceed one thousand dollars for
33 each violation. All monies collected pursuant to this subsection shall be
34 deposited in the general fund.

35 G. If an inspection reveals that a mobile home entering this state for
36 sale or installation is in violation of this chapter, the office may order
37 its use discontinued and the mobile home or any portion of the mobile home
38 vacated. The order to vacate shall be served on the person occupying the
39 mobile home and copies of the order shall be posted at or on each exit of the
40 mobile home. The order to vacate shall include a reasonable period of time
41 in which the violation can be corrected. A person shall not occupy or use a
42 mobile home in violation of an order to vacate.

43 H. If construction, rebuilding or any other work is performed in
44 violation of this chapter or any rule adopted pursuant to this chapter, the
45 office may order the work stopped. The order to stop work shall be served on

1 the person doing the work or on the person causing the work to be done. The
2 person served with the order shall immediately cease the work until
3 authorized by the office to continue.

4 Sec. 21. Section 41-2195, Arizona Revised Statutes, is amended to
5 read:

6 41-2195. Violation; classification; penalty

7 A. No person required to be licensed pursuant to this article may sell
8 or offer to sell in this state any manufactured home, factory-built building
9 or subassembly unless the proper state insignia or HUD label is affixed to
10 such unit.

11 B. No person required to be licensed pursuant to this article may
12 manufacture for delivery, sell or offer to sell in this state any
13 manufactured home, factory-built building or subassembly unless the unit and
14 its components, systems and appliances have been constructed and assembled in
15 accordance with the standards and rules adopted pursuant to this chapter.

16 C. A person shall not occupy or otherwise use a mobile home which has
17 been brought into this state or move a mobile home from one mobile home park
18 in this state to another mobile home park in this state unless it meets the
19 standards adopted pursuant to this chapter and displays the proper state
20 insignia. A mobile home that is rehabilitated in accordance with
21 rehabilitation rules adopted by the department and receives an insignia of
22 approval shall be deemed by a county or municipality to be acceptable for
23 relocation into an existing mobile home park. This subsection does not apply
24 to a person bringing a mobile home into this state as a tourist.

25 D. A person shall not advertise or offer for sale a mobile home which
26 has been brought into this state unless it meets the standards adopted
27 pursuant to this chapter and displays the proper state insignia.

28 E. No person may remove or cause to be removed an insignia of approval
29 or a notice of violation without prior authorization of the office.

30 F. A person shall not occupy or use a mobile home in violation of an
31 order to vacate issued pursuant to section 41-2153, subsection B,
32 paragraph 6.

33 G. Except as provided in subsections I and J of this section, a person
34 who violates ~~any provision of~~ this chapter, or any such rule or standard, is
35 guilty of a class 2 misdemeanor.

36 H. The ~~assistant~~ DEPUTY director, after notice and a hearing pursuant
37 to section 41-2181, subsection A, may deny the issuance of a license or
38 revoke or suspend the license of, impose an administrative penalty on or
39 place on probation any manufacturer, dealer, broker, salesperson or
40 installer who has violated ~~any provision of~~ this chapter or any standards and
41 rules adopted pursuant to this chapter.

42 I. Any manufacturer, dealer, broker, salesperson or installer who
43 knowingly violates ~~any provision of~~ this chapter or the rules adopted
44 pursuant to section 41-2144, subsection A, paragraph 1, 2, 9 or 10 or any
45 person who knowingly provides false information to seek reimbursement of

1 expenses under section 41-2157 is guilty of a class 1 misdemeanor. Each
2 violation of this chapter shall constitute a separate violation with respect
3 to each failure or refusal to allow or perform an act required by this
4 chapter, except that the maximum fine may not exceed one million dollars for
5 any related series of violations occurring within one year from the date of
6 the first violation.

7 J. An individual or a director, officer or agent of a corporation who
8 knowingly violates this chapter or the rules adopted pursuant to this chapter
9 in a manner which threatens the health or safety of any purchaser is guilty
10 of a class 1 misdemeanor.

11 K. A manufacturer, dealer, salesperson or broker shall not knowingly
12 sell a unit regulated by this chapter to an unlicensed person for the purpose
13 of resale, nor shall a dealer offer for sale or sell a new unit manufactured
14 by an unlicensed person.

15 L. In addition to any other obligations imposed by law or contract
16 during the term of a listing agreement, a licensee who has agreed to act as
17 an agent to offer a manufactured home for sale shall promptly submit all
18 offers to purchase the listed unit from any source to the client. The offers
19 shall be in writing and signed and dated by the party making the offer and
20 the client on receipt. A copy of the executed document shall be maintained
21 as part of the record of sales.

22 M. No licensee, owner or other persons may manufacture, alter,
23 reconstruct or install units regulated by this chapter, unless it is
24 accomplished in a workmanlike manner in accordance with the rules adopted
25 pursuant to this chapter and is suitable for the intended purpose.

26 Sec. 22. Section 41-2196, Arizona Revised Statutes, is amended to
27 read:

28 41-2196. State fire marshal cease and desist order; enforcement
29 procedures; violation; civil penalty

30 A. If the state fire marshal or his deputies have reasonable cause to
31 believe that any person has committed or is committing a violation of ~~any~~
32 ~~provision of~~ article 3 of this chapter, any rule adopted pursuant to article
33 3 of this chapter or any order issued pursuant to article 3 of this chapter,
34 which does not constitute an immediate and apparent hazard to life or
35 property, the state fire marshal through the ~~assistant~~ DEPUTY director may
36 issue and serve upon the person by certified mail a cease and desist order.

37 B. If the violation does not constitute an immediate hazard to life or
38 property, the state fire marshal shall grant to the person whom he alleges to
39 be in violation of any ~~provision,~~ rule or order a reasonable period of time,
40 which in no event shall be less than five days from the date of receipt of
41 the notice, to comply with the order.

42 C. Upon the failure or refusal of a person to comply with a cease and
43 desist order issued by the ~~assistant~~ DEPUTY director pursuant to subsection
44 A, the ~~assistant~~ DEPUTY director may file an action in the superior court in
45 the county in which the violation is alleged to have occurred to enjoin the

1 person from engaging in further acts in violation of the cease and desist
2 order. The court shall proceed as in other actions for preliminary
3 injunction. Any person found to be in contempt of an injunctive order of the
4 court shall be assessed a civil penalty of not more than one thousand dollars
5 with each day of violation constituting a separate contempt.

6 D. If the state fire marshal or ~~his~~ THE FIRE MARSHAL'S deputies have
7 reasonable cause to believe that any person has committed or is committing a
8 violation of ~~any provision of~~ article 3 of this chapter, any rule adopted
9 pursuant to article 3 of this chapter or any order issued pursuant to article
10 3 of this chapter which constitutes an immediate and apparent hazard to life
11 or property, the state fire marshal through the ~~assistant~~ DEPUTY director may
12 either:

13 1. Issue and serve by personal service a cease and desist order, which
14 order may require immediate compliance. Upon failure of a person to comply
15 with a cease and desist order issued pursuant to this paragraph, the
16 ~~assistant~~ DEPUTY director shall file an action in the superior court in the
17 county where the violation occurred to enjoin the person from engaging in
18 further acts in violation of the cease and desist order.

19 2. File an action in the superior court in the county in which the
20 violation is alleged to have occurred to enjoin a person from engaging in
21 further acts in violation of the ~~provision,~~ rule or order without issuing a
22 cease and desist order.

23 The court shall proceed as in other actions for preliminary injunction. Any
24 person found to be in contempt of an injunctive order of the court shall be
25 assessed a civil penalty of not more than one thousand dollars with each day
26 of violation constituting a separate contempt.

27 Sec. 23. Retention of existing employees

28 Any person whose job description has been eliminated by this act is
29 entitled to remain with the department of fire, building and life safety at
30 the person's current salary. The director of the department shall prescribe
31 those duties of the person as the director deems appropriate.