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HOUSE BILL 1241

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Debbie A. Rodella

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; REQUIRING THAT CERTAIN
MANUFACTURERS, DEALERS AND INSTALLERS OF MODULAR HOMES WARRANT
THEIR PRODUCTS AND SERVICES; PROVIDING PRIVATE RIGHTS OF ACTION
FOR VIOLATION OF MODULAR HOUSING WARRANTY REQUIREMENTS;
PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Modular Housing Warranty Act".

Section 2. DEFINITIONS.--As used in the Modular Housing
Warranty Act:

A. "division" means the construction industries
division of the regulation and licensing department;

B. "manufacturer" means a manufacturer of modular
housing that manufactures modular housing outside of an

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1 enclosed factory building; and

2 C. "modular housing" means a building intended for
3 residential use and designed to be placed on a permanent
4 foundation that is built in modules that are transported to the
5 home site on flat-bed trucks.

6 Section 3. MANUFACTURER'S WARRANTIES.--

7 A. A manufacturer of modular homes sold in this
8 state shall provide an express warranty to the consumer. The
9 manufacturer's warranty shall be in writing and shall provide:

10 (1) that the modular home complies with the
11 Modular Housing Warranty Act and the rules of the division;

12 (2) that the warranty is in effect for a
13 period of at least one year from the date of delivery to the
14 consumer, is not restricted to the original consumer and shall
15 carry forward to subsequent owners during the one-year period;

16 (3) that the modular home is free from defects
17 in materials and workmanship;

18 (4) that the manufacturer warrants all
19 appliances and equipment installed in the modular home by the
20 manufacturer to be free from defects in material and
21 workmanship for a period of at least one year from date of
22 delivery;

23 (5) that the manufacturer shall take
24 appropriate corrective action, within a reasonable period of
25 time, after a defect has been communicated to the manufacturer

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1 by the division or by the consumer;

2 (6) the license number, address and telephone
3 number of the manufacturer where notices of defects or warranty
4 violations may be given; and

5 (7) that the warranty shall not be voided as
6 long as the installation of the modular home conforms to
7 division rules.

8 B. A manufacturer shall warrant repair work
9 performed under the one-year warranty. Such repair work shall
10 be warranted for at least ninety days or until the end of the
11 original one-year warranty, whichever is later. The warranty
12 need not be in writing.

13 C. A manufacturer may not limit, modify or disclaim
14 the manufacturer's obligations under this section, nor
15 substitute the manufacturer's warranty obligations with the
16 warranty of a dealer, installer or subcontractor.

17 Section 4. DEALER'S WARRANTIES.--

18 A. A dealer of a modular home manufactured by a
19 manufacturer and installed in this state shall provide an
20 express warranty to the consumer. The dealer's warranty shall
21 be in writing, shall be delivered to the consumer on or before
22 the date of delivery of the modular home to the consumer and
23 shall provide:

24 (1) that all changes, additions or alterations
25 made to the modular home by the dealer are free from defects in

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1 materials and workmanship, and that all appliances and
2 equipment installed by the dealer are free from defects in
3 materials and workmanship unless the dealer furnishes a valid
4 written warranty from the manufacturer or dealer of the
5 appliances and equipment to the consumer warranting against a
6 defect in materials or workmanship to the consumer for a period
7 of time customary in the industry for a warranty for the
8 particular appliance or equipment;

9 (2) that the dealer warranties shall be in
10 effect for a period of at least one year from the date of
11 delivery to the consumer, are not restricted to the original
12 consumer and shall carry forward to subsequent owners during
13 the one-year period;

14 (3) that the dealer shall take appropriate
15 corrective action within a reasonable period of time after a
16 defect has been communicated to the dealer by the division or
17 by the consumer; and

18 (4) the license number, address and telephone
19 number of the dealer where notice of defects or warranty
20 violations may be given.

21 B. A dealer shall warrant repair work on changes,
22 additions or alterations made or authorized by the dealer
23 performed under the one-year warranty. Such repair work shall
24 be warranted for a period of at least ninety days or until the
25 end of the original one-year warranty, whichever is later.

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1 This warranty need not be in writing.

2 Section 5. INSTALLER'S WARRANTIES.--

3 A. An installer of a modular home manufactured by a
4 manufacturer and installed in this state shall provide the
5 consumer, at the time of installation, with a written warranty
6 providing:

7 (1) that all services performed by the
8 installer have been performed in compliance with the Modular
9 Housing Warranty Act and division rules;

10 (2) that any installation of an appliance or
11 accessory sold by the installer to the consumer is free from
12 defects in materials and workmanship, unless the installer
13 provides the consumer with a valid written warranty from the
14 maker or dealer of the materials, appliances or accessory
15 warranting against any defect in the materials or workmanship
16 for a period of time customary in the industry for a warranty
17 for the particular appliance, equipment or material;

18 (3) that the installer shall take the
19 appropriate corrective action within a reasonable period of
20 time after a defect has been communicated to the installer by
21 the division or the consumer; and

22 (4) that the warranty shall contain the
23 license number, address and telephone number of the installer
24 where notice of defects and warranty violations may be given.

25 B. Installers shall warrant against defects in

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1 materials or workmanship and all repair work performed by them
2 under the warranty required in this section. Such repair work
3 shall be warranted for a period of at least ninety days or
4 until the end of the original warranty, whichever is later.
5 This warranty need not be in writing.

6 Section 6. PENALTIES--PRIVATE RIGHT OF ACTION--ATTORNEY
7 FEES.--

8 A. A person who knowingly and willfully violates a
9 provision of the Modular Housing Warranty Act or a rule,
10 regulation or administrative order of the division in a manner
11 that threatens the health or safety of a purchaser or consumer
12 is guilty of a misdemeanor and upon conviction shall be fined
13 not more than one thousand dollars (\$1,000) or shall be
14 confined in the county jail not longer than one year or both.

15 B. In an action brought to enforce a provision of
16 the Modular Housing Warranty Act, the attorney general, upon
17 petition to the court, may recover on behalf of the state a
18 civil penalty not to exceed one thousand dollars (\$1,000) for
19 each violation, except that the maximum civil penalty may not
20 exceed one million dollars (\$1,000,000) for any related series
21 of violations occurring within one year from the date of the
22 first violation.

23 C. A person may bring an action in a court of
24 competent jurisdiction to recover actual and punitive damages
25 for injury resulting from a violation of a warranty under the

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1 Modular Housing Warranty Act. The court may award reasonable
2 attorney fees and costs to the prevailing consumer in an action
3 brought under this section. The right to bring an action
4 pursuant to this section is in addition to any other statutory
5 or common law rights or remedies.

6 D. Failure by a manufacturer, dealer or installer
7 to comply with the warranty provisions of the Modular Housing
8 Warranty Act or any implied warranties or the violation of any
9 provision of the Modular Housing Warranty Act by a person is an
10 unfair or deceptive trade practice in addition to those
11 practices defined in the Unfair Practices Act and is actionable
12 pursuant to the Unfair Practices Act. As such, the venue
13 provisions and all remedies available in the Unfair Practices
14 Act apply to and are in addition to the remedies in the Modular
15 Housing Warranty Act.

16 Section 7. DIVISION RULES.--The division, subject to
17 construction industries commission approval, shall adopt rules
18 necessary to carry out the provisions of the Modular Housing
19 Warranty Act.