

By Mr. Pedone of Worcester, petition of Vincent A. Pedone for legislation to further regulate the sale of manufactured homes. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT FURTHER REGULATING THE SALE OF MANUFACTURED HOMES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 (1) For the purposes of this section the following terms shall
2 have the following meanings:

3 "Business day," any day during which the service departments
4 of authorized dealers of the manufacturer of manufactured homes
5 are normally open for business.

6 "Consumer," a buyer or lessee, other than for purposes of
7 resale, of a manufactured home, any person to whom such
8 manufactured home is transferred during the duration of any
9 express or implied warranty applicable to such motor vehicle, and
10 any other person entitled by the terms of such warranty to enforce
11 its obligations.

12 "Dealer," a seller of manufactured homes.

13 "Lessee," any person who acquires the right to possession of
14 and use of a manufactured home under a lease agreement for a
15 term of not less than one year.

16 "Manufacturer," any person who is engaged in the business of
17 manufacturing manufactured homes, or in the case of manufac-
18 tured homes not manufactured in the United States, any person
19 engaged in the business of importing manufactured homes.

20 "Manufactured home," as defined in section 32Q of chapter 140.

21 "Nonconformity," any specific or generic defect in the utilities
22 or exterior paint of a manufactured home.

23 "Term of Protection," two years.

24 (2) If a manufactured home does not conform to any applicable
25 express or implied warranty, and the consumer reports the non-
26 conformity to the manufacturer of the vehicle, its agent or its
27 authorized dealer during the term of protection, the manufacturer,
28 its agent or its authorized dealer shall effect such repairs as are
29 necessary to conform the home to such warranty.

30 (3) If the manufacturer, its agent or authorized dealer of a man-
31 ufactured home does not conform to any such applicable express
32 or implied warranty by curing any nonconformity after a reason-
33 able number of attempts, the manufacturer shall accept return of
34 the home from the consumer.

35 In instances in which a home is sold and subsequently returned,
36 the manufacturer shall refund the full contract price of the home,
37 including all credits and allowances for any trade-in home, less
38 any cash award that was made by the manufacturer in an attempt
39 to resolve the dispute and was accepted by the consumer, and a
40 reasonable allowance for use, or shall offer to replace the home.
41 In instances in which a home is leased and subsequently returned,
42 the manufacturer shall refund all payments made by the consumer
43 to the manufacturer under the terms of the lease agreement less
44 any cash award that was made by the manufacturer in an attempt
45 to resolve the dispute and was accepted by the consumer, and a
46 reasonable allowance for use, or shall offer to replace the home.
47 The consumer shall have an unqualified right to reject a manufac-
48 turer's replacement and demand a refund. In instances in which a
49 home is replaced by a manufacturer under the provisions of this
50 section, said manufacturer shall reimburse the consumer for any
51 sales tax incurred by the consumer as a result of such replacement.
52 In instances in which a leased home is replaced by a manufacturer
53 under the terms of this section, an identical model home shall be
54 provided to the consumer for the remaining term of the original
55 lease agreement. In instances in which a home which was
56 financed by the manufacturer or its subsidiary or agent is replaced
57 under the provisions of this section, said manufacturer, subsidiary
58 or agent shall not require the consumer to enter into any refi-
59 nancing agreement which would create any financial obligations
60 upon such consumer beyond those implied by the original
61 financing agreement. In instances in which a home which was
62 leased from a dealer or manufacturer is replaced under the provi-

63 sions of this section, said dealer or manufacturer shall not require
64 the consumer to enter into any lease agreement which would
65 create any financial obligations upon such consumer beyond those
66 implied by the original lease agreement. In instances in which a
67 refund is tendered under the provisions of this section, the manu-
68 facturer shall also reimburse the consumer for incidental costs.
69 Refunds shall be made to the customer and lien holder, if any, as
70 their interests may appear. A reasonable allowance for use for a
71 manufactured home shall be made.

72 It shall be an affirmative defense to any claim under this
73 section: (i) that an alleged nonconformity does not substantially
74 impair the use, market value or safety of the home; (ii) that a non-
75 conformity is the result of owner negligence, damage caused by
76 accident, vandalism, or attempt to repair the home by a person
77 other than the manufacturer, its agent or authorized dealer; or
78 (iii) that a nonconformity is the result of any attempt substantially
79 to modify the home which was not authorized by the manufacturer.

80 A consumer shall have the option of retaining the use of any
81 home returned under the provisions of this section until such time
82 as said consumer has been tendered a full refund or a replacement
83 that is acceptable to the consumer. The use of any home retained
84 by a consumer after its return to a manufacturer under the provi-
85 sions of this section, shall, in instances in which a refund is ten-
86 dered, be reflected in the above mentioned reasonable allowance
87 for use.

88 (4) A reasonable number of attempts shall be deemed to have
89 been undertaken to conform a manufactured home to any applic-
90 able express or implied warranties if the same nonconformity has
91 been subject to repair three or more times by the manufacturer or
92 its agents or authorized dealers within the term of protection, but
93 such nonconformity continues to exist or such nonconformity has
94 recurred within the term of protection.

95 The term of protection shall be extended by any period of time
96 during which repair services are not available to the consumer as a
97 direct result of a war, invasion, fire, flood or other natural disaster.
98 The term of protection, shall also be extended by that period of
99 time during which repair services are not available as a direct
100 result of a strike. the burden shall be on the manufacturer to show
101 that any event claimed as a reason for an extension under the pro-
102 visions of this paragraph was the direct cause for the failure of the

103 manufacturer, its agent or authorized dealer to cure any noncon-
104 formity during the time of said event. Extensions for concurrent
105 events shall not be cumulative.

106 (5) Nothing in this section shall be construed as imposing any
107 liability on an authorized dealer or creating any cause of action by
108 a consumer against a dealer under the provisions of this section.

109 Nothing in this section shall be construed to limit the rights or
110 remedies which are otherwise available to a consumer or manu-
111 facturer under any other applicable provision of law.

112 Nothing in this section shall be construed as imposing any lia-
113 bility on a dealer or creating a cause of action by a manufacturer
114 against its authorized dealer under this section except with respect
115 to (i) failure by an authorized dealer to properly effect prepara-
116 tion, installation of options or repairs when such preparation,
117 installation of options or repairs would have prevented the occur-
118 rence of or cured a nonconformity; (ii) express warranties offered
119 by an authorized dealer which exceed the provisions of the manu-
120 facturer's express warranties; and (iii) that portion of the cost of
121 reimbursing a consumer for dealer-added options which represents
122 the dealer profit from the addition of such options. The manufac-
123 turer shall reimburse its authorized dealer for all incidental and
124 consequential damages, including attorney's fees, incurred by
125 such dealer as a direct result of any legal action brought by a con-
126 sumer under this section.

127 No consumer shall be required by any manufacturer, its agent
128 or its authorized dealer to give notice directly to a manufacturer of
129 the existence of any nonconformity before resorting to state-
130 certified, new car arbitration.

131 (6A) A clear and conspicuous list of the rights of the consumer
132 under this section shall be affixed by a sticker to a window of
133 each new manufactured home offered for sale or lease in the com-
134 monwealth. An enumeration of these rights shall also be provided
135 along with ownership manual materials. The form and manner of
136 these notices shall be prescribed by the secretary of consumer
137 affairs and business regulation.

138 (7) Failure to comply with any of the provisions of this section
139 shall constitute an unfair or deceptive act under the provisions of
140 chapter ninety-three A. The failure of a manufacturer either to
141 abide by the decision of a state-certified arbitration, shall consti-
142 tute the granting of relief upon demand.

143 The secretary of consumer affairs and business regulation shall
144 inform the office of the attorney general of any method, act or
145 practice of which she is aware that is deemed by her to be a viola-
146 tion of any provision of this section.

