

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

MANUFACTURED HOME WAREHOUSER LIEN ACT

House Bills 5834-5836 as introduced
First Analysis (6-5-90)

Sponsor: Rep. Nelson W. Saunders
Committee: Urban Affairs

THE APPARENT PROBLEM:

Prior to enactment of the Mobile Home Commission Act in 1976, mobile homes were regulated by the Michigan Vehicle Code. Under the vehicle code, mobile home warehousemen were allowed to place a "garage-keeper's" lien on mobile homes that they had stored, serviced, and maintained when the owner(s) did not pay for the services. Some people feel the Mobile Home Commission Act does not provide comparable remedies to mobile home warehousemen. As the lien provisions in the vehicle code no longer apply to mobile homes, some warehousemen have claimed liens via the courts. In other instances, warehousemen have relied on the Uniform Commercial Code, which treats mobile homes (and other impermanent, transportable "manufactured homes") as personal, rather than real, property. Thus, it appears that warehousemen liens, technically, can be obtained under the commercial code, but there is doubt about this application of the code. Because of this apparent confusion concerning the manner in which a warehouseman can establish a lien on manufactured homes stored or moved, some people feel legislation is needed to clarify how this may be done.

In addition, various concerns about manufactured housing were brought to light in a report by the Michigan Manufactured Housing Task Force, issued in June of 1989. Among other things, the report indicated that consumer and industry protections or remedies are lacking in the act when manufactured home dealers or servicers fail to honor warranties on purchases. The report cited other examples of programs implemented in other construction-related industries that protect both consumers and contractors. For instance, the Michigan Construction Lien Act established a special "recovery fund" — which is self-funded by \$50 license fees paid into it by various contractors and residential builders — under which financial losses relating to the building of a home can be recovered when violations of the act are uncovered through the courts. Such a program exists in Colorado specifically to address the concerns of manufactured housing consumers, and the task force has recommended that Michigan develop a similar recovery fund program.

THE CONTENT OF THE BILLS:

House Bills 5835 and 5836 would amend the Mobile Home Commission Act to change the act's title and other references to "mobile home," instead, to "manufactured home" and to create a Mobile Home Recovery Fund, while House Bill 5834 would create a new act — the Manufactured Home Warehouseman Lien Act — to allow a manufactured home warehouseman to obtain a lien upon a manufactured home in the amount due him or her for storage, maintenance, and "other expenses for which a lien is claimed."

House Bill 5834 would create the Manufactured Home Warehouseman Lien Act to give a manufactured home

warehouseman a lien upon a manufactured home (generally, a dwelling transportable in one or more sections such as a mobile home) in the amount due him or her for storage, maintenance, and other expenses for which a lien was claimed. A warehouseman lien would have priority over all other liens on a manufactured home except for a prior perfected security interest.

Every manufactured home warehouseman (which would mean a person who engaged in the business of moving or storing manufactured homes) who moved or stored a manufactured home pursuant to an expressed, implied, written, or oral contract would have a warehouseman's lien upon the manufactured home. The lien would be in the proper amount due the warehouseman for the storage and moving of the structure, and any fees or other expenses claimed under the lien would have to be "reasonable and customary" ones ordinarily charged in the regular course of business.

A manufactured home warehouseman could keep a manufactured home in his or her possession for 90 days after performing the labor or furnishing the supplies for which a lien was claimed. After this period, a warehouseman would have to file notice of claim of a warehouseman lien, which would have priority over all other liens on the home except a prior perfected security interest. A holder of a chattel mortgage, conditional sales agreement, security interest, or other lien created prior to the accrual of the warehouseman lien could agree to subordinate his or her interest to that of the manufactured home warehouseman. A warehouseman lien exceeding \$1,000 for a single-section home or \$2,000 for a multi-section home could not be held against the holder of a chattel mortgage, conditional sales agreement, security interest, or other lien created prior to the accrual of the warehouseman lien. If such a holder paid the warehouseman the amount of that lien, the warehouseman lien would have to be released and the amount paid to release it would be added to the amount of the prior lien.

A manufactured home warehouseman lien would be enforced only under the following provisions:

- A warehouseman whose lien had not been satisfied could sell the manufactured home at a sale that conformed to the bill's provisions, except when the home was subject to a prior perfected security interest.
- The registered owner would have to be made aware of the sale by notice personally delivered or sent by certified mail to the last known address provided to the warehouseman by the registered owner, or the address last known to the manufactured home park operator, if the operator requested moving and storage.
- If the request to move and store the manufactured home was made by a park operator who was not the registered owner, two copies of the notice of the proposed sale would have to be provided to the park operator. He or she would have to post one copy of the notice on a

bulletin board "or other conspicuous common area" in the park, and would have to keep on file one copy that could be inspected by the registered owner or a holder of a security interest or other lien on the manufactured home.

- The warehouser would have to deliver a notice of the proposed sale to any lienholder listed on the title that was on file with the Department of Commerce. The warehouser lien could not be held against a lienholder if the warehouser did not provide proper notice as the bill would require.
- The warehouser also would have to notify the Manufactured Home Commission, within the commerce department, in Lansing by first class mail. The notice of sale would have to be written in "plain language" and would have to contain 1) a brief, general description of the manufactured home subject to the warehouser lien, 2) an itemized statement of the warehouser claim showing the amount due and the date it became due, 3) a "conspicuous statement, in not less than 12-point type," (which would have to specify the time, place, manner, and date of the sale — which could not be less than 65 days from the date the notice was served) indicating that unless the owner paid the amount claimed in the notice within the designated time or made other arrangements suitable to the warehouser, the manufactured home would be advertised for sale or sold, and 4) the name, address, and telephone number where the warehouser could be contacted by the registered owner, holder of a security interest, or other lienholder.

The warehouser could sell the manufactured home at a public auction if the charges stated in the itemized account were not paid within 65 days after notice of the sale had been served and if there were no prior perfected security interest. If the warehouser directly or indirectly purchased the mobile home at the sale, the proceeds would be considered to be either the amount paid by the warehouser or the fair cash market value of the home at the time of sale, whichever was greater. Any surplus from the sale, minus all charges of the warehouser and all "reasonable" charges for conducting the sale, would have to be used to pay the claim of any lienholder who was notified of his or her claim by the warehouser. Any remaining funds would have to be returned to the home's registered owner. After the sale, the buyer would apply for a manufactured home title as required by the Manufactured Housing Commission Act. Upon receiving the application and fee, the commerce department would issue a title to the new owner.

A registered owner who suffered damages because the warehouser or manufactured home park operator did not comply with the bill could file a suit for the actual amount of the damages or \$250, whichever was greater, plus "reasonable" attorneys' fees.

The bill would not authorize the removal of a manufactured home resident from a manufactured home nor allow interference with a tenant's possessory interest in violation of the Revised Judicature Act of 1961.

House Bill 5835 would amend the Mobile Home Commission Act (MCL 125.2301 et al.) to change the act's title to the Manufactured Housing Commission Act and to amend various references in the act that now refer to "mobile home" and the "Mobile Home Commission" to reflect the act's new title. In addition, the act now provides that if the interest of the owner of a mobile home is terminated by sale pursuant to a levy of execution, attachment, or other court process, the transferee of that

interest must send or give the Department of Commerce the last certificate of title, an application for a new certificate of title, and an affidavit giving information about the sale. The bill would extend these requirements to the termination of an owner's interest by execution of a manufactured home warehouser lien.

The bill would also provide that the Mobile Home Recovery Fund (to be created by House Bill 5836) would be capitalized at \$1 million, and that a claim from the fund could not be paid until it contained at least \$500,000. The bill would raise the fee for obtaining a certificate of title on a manufactured home from \$45 to \$60 and would specify that \$15 of this fee would have to be deposited into the recovery fund until it became capitalized; once the fund was capitalized, \$15 of the \$60 fee would be credited to the Mobile Home Fund. When the recovery fund balance dropped below \$500,000 at the end of a fiscal year, \$15 of the registration fee would have to be credited to it until it was capitalized again, after which \$15 of the fee would be credited to the Mobile Home Fund. The fee for obtaining a duplicate, replacement, or corrected title would also be raised from \$15 to \$25. Finally, the bill would appropriate \$500,000 from the Mobile Home Fund to the recovery fund.

House Bill 5836 would amend the Mobile Home Commission Act (MCL 125.2322 et al.) to create the Mobile Home Recovery Fund in the Department of Treasury, and would provide for the administration of the fund by the Department of Commerce. All money remaining in the fund at the end of a fiscal year, including interest earned, would be carried over in the fund to the next and succeeding fiscal years and could not be credited or revert to the general fund. All costs associated with administering the fund would be paid from it. In addition, the act currently allows the Mobile Home Commission to promulgate rules requiring a licensed mobile home dealer to post a surety bond in an amount up to \$10,000 for each sales location. The bill would allow the commission to require a \$10,000 bond to be posted for the first of every three sales locations and would allow a letter of credit to be used (in addition to cash or other securities) in lieu of the bond.

Application for Court-Ordered Payment from Fund. A purchaser who obtained a final judgment in a court of record against a manufactured home manufacturer, installer, or repairer or a manufactured home dealer licensed under the act for failure to honor warranties or guarantees, or for fraud, willful misrepresentation, or a violation of the act or rules promulgated under the act, could apply to the court of judgment for an order directing payment from the fund if all of the following were true:

- the home had been purchased for personal or family residential purposes;
- the judgment had been entered in a civil action based on a transaction that occurred at least six months after the bill's effective date;
- the civil action in which the judgment had been entered was brought within one year after the transaction on which the action was based;
- notice of the action was given to the commerce department by service of a copy of the complaint within 30 days after the action's commencement;
- the application was filed after the time for appeal had expired and no more than one year after the termination of all proceedings in the civil action in which the judgment had been entered;
- the judgment debtor had refused to pay all or part of the judgment;

- all reasonably available legal remedies, including all postjudgment remedies, had been pursued and the judgment remained unpaid;
- the claimant was not a spouse of the judgment debtor or a person representing the spouse; and
- the judgment was not on a bond issued before the bill's effective date.

If the judgment was against a manufactured home manufacturer, the purchaser could assign his or her claim to a licensed person who performed the warranty work.

Court-Ordered Payment. Upon receiving the application and verifying that the requirements relative to an application were met ("and a hearing at which the department is represented"), the court would have to order payment from the fund. Except as otherwise specified, the order would direct the department to issue a warrant in the amount of the "actual and direct" loss suffered by the purchaser plus court costs and reasonable attorney fees of no more than 15 percent of the amount of the judgment that remained unpaid. An order issued for an individual claim, however, could not be for more than \$25,000, and could not be for more than \$100,000 for a group of claims against a single manufacturer, installer and repairer, or manufactured home dealer.

At the commerce department's request, the court could require all claimants and prospective claimants against a single licensee or manufacturer to be joined in one application so that all claims could be determined and settled equitably. If the fund had insufficient funds to pay the unpaid portion of each judgment in full, or if the total amount of the combined unpaid judgments exceeded the \$25,000/\$100,000 limitation, the court could order that payments be distributed to claimants in proportion to their respective claims or in some other equitable manner.

A purchaser who commenced a civil action would have to serve a copy of the complaint to the department within 30 days after commencing the action, and the department could intervene in such a civil action. Also, the department could compromise a claim made in a civil action and would not be bound by a prior compromise of the judgment debtor.

Payments from the Fund. Except as otherwise provided, the department would have to pay claims against the fund in the order in which it received them, disregarding the order in which the civil actions were commenced, judgments entered, or applications filed. If there was not enough money in the fund at a particular time to satisfy a payment order, the department would have to distribute the available funds to the claimant. If the order was for combined claims, the department would have to distribute funds according to the order's terms on a pro rata basis. When sufficient funds were deposited into the fund, the department would have to satisfy the unpaid claims or portions of claims in the order that these were received.

Commission as Attorney. A manufactured home dealer or installer and repairer who received or renewed a license before the bill's effective date — upon whom service could not be made with "reasonable diligence" — would be considered to have appointed the commission as its attorney in fact upon whom service of process could be made in civil actions. A licensee who received or renewed a license after the bill's effective date would have to sign an irrevocable consent with the commission appointing it as its attorney in civil actions. The consent would have to contain the acknowledged signature of an officer, owner, or partner of the licensee.

License Suspension. If the department paid an amount from the fund to satisfy a judgment or in settling a cause of action described in the bill, it would have to suspend the license of the manufactured home dealer or installer and repairer on the effective date of the order or settlement. The department could not reinstate the license until the licensee had repaid in full, including interest at the rate of 12 percent per annum, the amount paid by the fund. If the department paid an amount from the fund to satisfy a judgment against a manufacturer of these types of homes, the manufacturer could not sell a manufactured home in the state until the amount, including interest, was repaid. This provision would not prevent the department from taking disciplinary action against a licensee or manufacturer for a violation of the act or rules promulgated under the act. Also, repayment of an obligation to the fund by a licensee would not nullify or modify the effect of other disciplinary proceedings brought under the act or its promulgated rules.

Civil Penalties. A person who violated provisions within the National Manufactured Housing Construction Safety Act, or a regulation or order issued under it, which correspond to the bill's provisions, would be liable for a civil fine of not more than \$1,000, recoverable as provided in the bill. Each violation of this nature would be a separate one with respect to each manufactured home or relative to each failure or refusal to allow or perform an act required by federal law. A civil fine could not exceed \$1 million for a related series of violations that occurred within one year after the date of the first violation in the series.

An individual, or a corporate director, officer, or agent who, within the state, knowingly and willfully violated federal laws or ruled that in a manner that threatened the health or safety of a purchaser would be guilty of a misdemeanor, and could be imprisoned for up to one year or fined up to \$1,000, or both. A default in paying a civil fine or an installment of a fine could be remedied by any means under the Revised Judicature Act, and the department could enter into an agreement with the federal government to compensate the state for the cost of enforcing the bill's provisions.

FISCAL IMPLICATIONS:

According to the Mobile Home Commission within the Department of Commerce, the bill would not affect state general fund expenditures as the proposed recovery fund would be self-funded through fee increases and an appropriations transfer from the existing Mobile Home Fund, as specified in House Bill 5835. The higher fees would bring in about \$500,000 in new revenue which would go directly into the recovery fund until it was capitalized at this level; once capitalized, revenue from the new fees would go into the Mobile Home Fund. The commission expects the recovery fund — out of which payments on claims would be made — to reach \$1 million in about three years. (5-31-90)

ARGUMENTS:

For:

The bills constitute a comprehensive package that would protect the interests of warehousers, lenders, and consumers of "manufactured housing" (which would include impermanent, movable structures used as dwellings, such as mobile homes). For instance, under current law mobile home warehousers have no choice but to resort to time-consuming and expensive litigation to recover costs for contracted services. House Bill 5834 would

specify procedures that a warehouser could take to recover costs for completing contracted services. This bill also would protect the primary lender in warehouser lien cases. In instances where a prior perfected security interest on a manufactured home exists, the bill would allow warehousers to take a secondary lien so as to recover costs after the primary lender had been paid. And the bill also ensures that if a mobile home park owner wished to evict a tenant, he or she would have to follow specific procedures for doing so but could not seize the tenant's property for the sole purpose of an eviction. Provisions within House Bill 5835 would update and rename the act so that it applied to all "manufactured housing" and not just to mobile homes. The bill would also provide for a \$15 fee increase on a manufactured home title registration (as well as a \$10 increase in the fee for changing an existing title) which would be used to fund the Mobile Home Recovery Fund created by House Bill 5836. This self-funding recovery fund would be similar to a fund established under the Construction Lien Act; under the bill, consumers of manufactured housing who won a final court judgment against manufactured home dealers or repairers for failure to honor certain warranties could petition the court to order the recovery fund to reimburse them for their losses plus various court-related costs. And licensees who committed violations that caused court orders for payments from the fund would lose their licenses until all the fund's costs were repaid. The bills would address problems cited within the manufactured home industry while also preserving, and increasing, protections afforded consumers under current Mobile Home Commission rules.

Response: To be consistent within the package, House Bill 5836 should be amended to refer to "manufactured housing" rather than "mobile homes," both in reference to the recovery fund and in the title of the act.

POSITIONS:

The Mobile Home Commission, within the Department of Commerce, supports the bills. (5-31-90)

The Michigan Manufactured Housing Association supports the bills. (5-31-90)

The Michigan Consumers Council has no position on the bills. (5-31-90)