

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on March 9, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research  
Susan Kannarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

L.J. Leatherman, KTLA  
Martha Neu Smith, Kansas Manufactured Housing Association  
Joan Wagon, Secretary, Department of Revenue

Others attending:

See Attached List.

The committee continued the public hearing on:

**SB 445–Fairness in private construction contracts**

Mr. Leatherman testified in opposition to the bill. (Attachment 1)

Ms. Neu Smith testified in opposition to the bill. (Attachment 2)

Chairperson Brownlee stated that the committee would leave the hearing open so that the conferee from the AIA would be able to testify the following day.

Chairperson Brownlee opened the public hearing on:

**HB 2719–An act concerning the Kansas manufactured housing act**

Ms. Smith testified in favor of the bill. (Attachment 3)

Written testimony in favor of the bill was provided by:

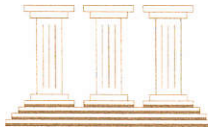
Rod Cellmer, General Manager, Schult Homes, Plainville, KS (Attachment 4)  
Richard Krell, Division Manager, Liberty Homes, Inc. (Attachment 5)  
Garrett L. Wright, Vice President, D & H Homes (Attachment 6)  
Danny Burtzloff, LMH Homes (Attachment 7)  
Dayne Rinehart, President, Village Homes (Attachment 8)  
Tom Byrne, Royal Supply, Inc. (Attachment 9)

Secretary Wagon testified in opposition to the bill and provided the committee with proposed amendments. (Attachment 10)

Senator Wagle asked if the state would incur some type of liability if it inspected the homes, and Secretary Wagon stated that without the inspections, there would be some kind of liability. The Secretary stated that the Department of Revenue could not be in charge of the inspections. Senator Barone asked who should be in charge of them, and the Secretary replied that although Revenue would prefer it not be them, if it was going to be her department, they would prefer to do a good job. Senator Jordan asked what would happen if the state was not in compliance, and Secretary Wagon replied that the Feds would come in and take over administration, which would be fine with her.

Chairperson Brownlee closed the hearing on **HB 2719** and adjourned the meeting. The next meeting will be at 8:30 a.m. on March 10, 2004 in Room 123-S of the Capitol.





KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

March 9, 2004

TO: Members of the Senate Commerce Committee  
FROM: LJ Leatherman  
RE: SB 445

Chairman and members of the Senate Commerce Committee thank you for the opportunity to submit comments in opposition to SB 445. My name is LJ Leatherman and I currently serve as legislative vice chairman elect of the Kansas Trial Lawyers Association.

KTLA opposes SB 445 if it applies to the construction of a single family residence. We also oppose the loser pay provisions contained in it.

Sec. 8 appears to somewhat limit the application of the Act to single family residences. However, the way the section is worded it only excludes "improvements" to single family residences. Therefore the primary construction of a single family home would fall under this Act. If that is the case, this Act unfairly favors the builder. In most commercial construction contracts the sophistication of both parties as it relates to drafting construction contracts is roughly equal. The same is not true for the vast majority of homebuyers. While a large company such as Boeing can negotiate the specific language it desires from the contractor, the same simply cannot be said of a homeowner.

Sec.3 gives the consumer a very short 5 day limit to dispute a bill from a contractor and if not disputed, interest automatically begins to accrue at 1.5% per month. This is too short a period of time to receive a bill, assess the scope of work contracted for and then determine whether or not the work billed for was done satisfactorily.

Sec. 6 nullifies any contract provision whereby a contractor or subcontractor waives remedies, but has no such counterpart for owners. Further, subsection (b) voids a contractors agreed upon obligations for indemnity for death or injury not "caused" by the contractor. Under contract law, the parties are presumed to understand what they contracted for and to unilaterally relieve the obligations of the contractor runs counter to established law. The contractor will almost always draft the construction contracts and to void provisions they had the ability to negotiate for upfront, again runs counter to common sense and accepted interpretation of contract law.

We are also opposed to the proposal in SB 445 which would require the courts to assess the prevailing party's attorney's fees against the losing party. This violates longstanding principles of American law, and would have a chilling effect on the right of individuals to access the judicial system. This is the same issue that you as members of the Senate recently contemplated and voted down in SB 420. The loser pay provision in this act is equally objectionable.

Ever since James Madison wrote the Constitution, and Thomas Jefferson wrote the Bill of Rights, the right to a trial by jury has been preserved. When those documents were written they were way ahead of their time, and they still are because they allow litigants – regardless of background or economic status – to access the judicial system for resolution of disputes.

Soon after those immortal documents were written, the United States did away with what was known as the "English Rule", and the "American Rule", in which both parties are responsible for their own attorney's fees, was adopted. In the 1796 decision in *Arcambel v. Wisemen*, the United States Supreme Court rejected the English Rule stating that "the general practice in the United States is in opposition to the [English Rule]." More recently, in 1967, the United States Supreme Court held in *Fleischman Distilling Corp. v. Maier Brewing Co.*, that:

In support of the American rule, it has been argued that since litigation is at best uncertain one should not be penalized for merely defending or prosecuting a lawsuit.

The American Rule, in which both parties are responsible for their own attorney's fees, is a longstanding principle of American law and we respectfully request that the provision assessing attorney's fees be stricken.

Thank you for the opportunity to express our concerns about SB 445.

*Terry Humphrey, Executive Director*

*Senate Commerce  
03/09/04  
Attach #1*



3521 SW 5th Street  
Topeka, KS 66606  
785-357-5256  
785-357-5257 fax  
kmha1@mindspring.com

**WRITTEN  
TESTIMONY BEFORE THE  
SENATE COMMITTEE ON  
COMMERCE**

TO: Senator Karin Brownlee, Chairwoman  
And Members of the Committee

FROM: Martha Neu Smith, Executive Director  
Kansas Manufactured Housing Association

RE: SB 445 – Concerning Private Construction Contracts

Chairwoman Brownlee and Members of the Committee, my name is Martha Neu Smith and I am the executive director of Kansas Manufactured Housing Association (KMHA). Thank you for the opportunity to provide written comments on SB 445.

KMHA represents all facets of the manufactured housing industry, (i.e. manufacturers, retailers, community owners & operators; finance & insurance companies; service and suppliers and transporters).

KMHA would like to voice our concern with SB 445. While it is our understanding that this bill was not meant to address single-family residential housing, the wording in Section 8 (page 7) causes us concern. The bill states, "The provision of the Kansas fairness in private construction contract act shall not apply to the improvement of single-family residential housing and multi-family residential housing of four units or less." The way we read Section 8 is, the act would apply to the original construction of single-family residential housing...it would not apply to any improvements made later to the structure.

If the intent were to not include single-family residential construction, we would respectfully request that the word "improvement" be deleted. We feel this change would clarify that intent.

Thank you for your consideration.

Senate Commerce  
03/09/04  
Attach #2





3521 SW 5th Str.  
Topeka, KS 66606  
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**TESTIMONY BEFORE THE  
SENATE COMMITTEE ON  
COMMERCE**

**TO:** Senator Karin Brownlee, Chairwoman  
And Members of the Committee

**FROM:** Martha Neu Smith, Executive Director  
Kansas Manufactured Housing Association

**RE:** HB 2719 – Kansas Manufactured Housing Act; prescribing  
installation standards; licenses for installers and apprentice  
installers; fees and civil penalties

Chairwoman Brownlee and Members of the Committee, my name is Martha Neu Smith and I am the executive director of Kansas Manufactured Housing Association (KMHA). Thank you for the opportunity to comment on HB 2719.

KMHA represents all facets of the manufactured housing industry, (i.e. manufacturers, retailers, community owners & operators; finance & insurance companies; service and suppliers and transporters).

The Manufactured Housing Industry asked for the introduction of HB 2719 to satisfy a change in federal law. For those of you who are not familiar with the manufactured housing industry, we have been federally regulated since 1976, and HUD is our regulator.

The federal changes came about on December 27, 2000, when President Clinton signed the Manufactured Housing Improvement Act into law. This Act did several things for both the industry and the consumer. It created a private sector consensus committee to make recommendations to the Secretary of HUD on ways to keep our building code up to date. It provides the Manufactured Housing Division within HUD a career administrator and clarified the scope of our federal preemption. Furthermore, homeowners and the industry will benefit from the requirement that each state must institute an installation program. The program is to include a state standard, training, licensing, inspection and a dispute resolution program within five years of the law's enactment.

*Senate Commerce*  
03/09/04  
Attach # 3

**What happens if we do nothing?** If we do nothing, HUD will set up shop in Kansas and administer the program for us. If that happens there will be a loss of control and revenue at the local level; and our homebuyer will ultimately pay for the inflated costs typical of federally run programs. Not to mention, can you imagine an individual's level of frustration when trying to find their way through HUD's maze of red tape, hierarchy and regulations?

KMHA felt that having HUD administer the program would not be a positive step for our homebuyer, local governments or the industry; and tried to approach the federal requirements (state installation standard, training, licensing, inspection and a dispute resolution program) with the least disruptive and least expensive approach for all the parties. HB 2719 provides licensing, testing, training and a dispute resolution program within the Department of Vehicles. The inspection requirement is left at the local level. Under HB 2719, if a city or county currently has an inspection program, the only change will be is that they will inspect to a state code vs. a local code and the license will be issued by the State.

**Why the Department of Vehicles?** The Manufactured Housing Industry is currently licensed within the Department of Vehicles under K.S.A. 58-4200 the Manufactured Housing Act. Within K.S.A. 58-4207 are the requirements for the licensing of: new and used manufactured home dealers; manufactured home manufacturers; factory representatives; brokers; lending agencies; manufactured home salespersons and insurance companies.

KMHA estimates with the new federal requirements the Department of Vehicles will issue approximately 50 to 70 manufactured home installer's licenses, which are \$300 and are issued once every three years.

**Do we need to do anything this year, the federal standard hasn't been published yet?** Yes, the Legislature needs to pass HB 2719 this year, because the Director will have several initial requirements that will take a significant amount of time. For example, tests will either need to be developed or an existing test certified and a training program will need to be developed and approved. Both of these requirements would need to be based on the installation standard that is adopted through the rule and regulation process.

The federal standard has not been published, however, HUD's December 22, 2003, semi-annual regulatory agenda stated that the Installation Program (comprised of the model installation standard, training/licensing of installers, and inspection of home installation) will be published in March 2004. That is why we drafted HB 2719 with the installation standard requirement as part of the rule and regulation process. We understand that for individuals outside the industry the installation standard requirement seems overwhelming, that is why KMHA worked for several years on developing a generic installation standard. We

worked with installers, manufacturers, retailers, suppliers, and a Kansas licensed engineer. Even so, this standard would have to go through the rule and regulation process that is not a quick process.

Since the federal standards have not been published, KMHA asked to have the bill amended and delay the deadlines from January 1, 2005 to January 1, 2006, to provide a greater level of comfort to the Division of Vehicles.

**To date, 30 states already have these programs in place and 18 states have already started offering training courses.**

**What have other states done?** Of our border states, Missouri currently has a bill in their Legislature; Oklahoma passed legislation in 2000; Colorado passed legislation in 2000; and Nebraska already had a program.

Manufactured housing is still one of the main providers of affordable housing and we feel HB 2719 is a reasonable approach to a somewhat daunting task. The Industry feels Kansas is on the right track with HB 2719, this is a major piece of legislation for the Manufactured Housing Industry and action is needed this year to demonstrate Kansas' good intentions of meeting the federal requirements. The alternative is, Kansas loses control and our homebuyers will be forced to find their way through the red tape and hierarchy of the federal government.

KMHA would strongly urge the Committee to pass HB 2719 and keep as much control and revenue in Kansas as possible.

Thank you.



3/4/04

Senator Karin Brownlee  
Chairwoman  
Senate Committee on Commerce

Dear Senator Brownlee,

I am the General Manager of Schult Homes in Plainville, KS. Our Plant opened in June of 1968 and I joined Schult in December of 1969. In my 34 years, there has been a lot of evolution and positive change in the Manufactured Housing Industry.

HB 2719 is one of the positive changes we are seeking for our industry. I have been serving on our task force and support the proposals of the bill.

We feel that we are being fiscally prudent by not asking for a new administrative agency and feel the Department of Vehicles would serve us well, as that is where our license and titling requirements currently are.

We feel that HB 2719 will comply with the upcoming Federal requirements for installation standards while keeping control at a local level.

I ask for your support on this Bill. If you have any questions please contact me at 1-800-255-0323 or email at [rcellmer@oakwoodhomes.com](mailto:rcellmer@oakwoodhomes.com).

Sincerely,

Rod Cellmer  
General Manager





# LIBERTY HOMES, INC.

Kansas Division

Richard Krell

Senator Brownlee, Chairwoman  
And Members of the Senate  
Committee on Commerce  
Statehouse  
Topeka, Kansas 66612

Dear Chairwoman Brownlee and Members of the Committee,

My name is Richard Krell. I am the Division Manager for Liberty Homes located in Yoder, Kansas. I have been in the Manufactured Housing Industry for 37 years, 32 of them in Kansas.

I am writing you to voice Liberty Homes' support of HB2719. The industry has worked for years trying to improve its quality and its image. HB2719 is another important step in that positive direction.

Since 1976, the federal government - HUD, has regulated the manufactured housing industry. In 2000, President Clinton signed the Manufactured Housing Improvement Act, which required states to have a program, that: trained and licensed manufactured home installers; have a state installation standard and a process where disputes could be settled. Consequently, Kansas Manufactured Housing Association introduced HB2719. While this bill was introduced to meet HUD requirements that go into effect in 2005, we feel this program provides long-term benefits to our customer, which in turn provides long-term benefits to the industry.

I understand that there is some question as to which state agency our licensing should be located under and whether or not we need to address the requirement of the Manufactured Housing Improvement Act of 2000 this year.

First, the association looked at all the agencies that might be a logical location and met with several of them. It was our conclusion, that while the Department of Vehicles may not initially seem to be the best location, it is the most logical. The Department of Vehicles licenses all other areas of our industry, not to mention they also issue and eliminate our titles.

Second, the industry feels very strong that the Manufactured Housing Improvement Act of 2000 does need to be addressed this year. As a manufacturer that deals with HUD on a regular basis, the very last thing we want our customers to have to deal with is bureaucracy and red tape at HUD. We tried to make this legislation as simple as possible, but there are still a lot of requirements the Director will need to address. KMHA has done much of the preliminary work, such as developing a generic installation standard that has been stamped by a Kansas Engineer, having materials to develop a test or the name of a testing company to provide a test, and also being available as a resource for training. Most KMHA members, like myself, are also available to the Director and her staff to assist in the implementation of HB2719.

Again, I would ask the members of the Senate Commerce Committee to support HB 2719.

Sincerely,

Richard Krell  
Division Manger  
Liberty Homes, Inc.



4103 East Hwy. 50  
GARDEN CITY, KANSAS 67846  
Phone: (620) 275-1067  
www.dandhhomes.com

4103 East Hwy. 50  
Garden City, KS 67846

February 10, 2004

**RE: Kansas Manufactured Housing Act; prescribing installation Standards**

**Senate Committee on Commerce**

**My name is Garrett Wright Owner of D&H Homes in Garden City, Kansas. My father started D&H Homes in 1971 and I have been Vice President and General Manager Since 1990. I am Currently serving on the Kansas Manufactured Housing Association's Board of directors and have served on the Task Force on Installation Committee Since Sept. 1998.**

**I believe completely in manufactured housing and also believe that manufactured housing is the most affordable housing for the largest portion of our population. HB2719 will help the manufactured industry by keeping the installation of these homes uniform and consistent from county to county and city to city. HB2719 will also help maintain a level of professionalism with the industry and will protect the consumer from improper installations.**

**We are currently licensed (Dealer) and all our titling is under the Department of Vehicles. I believe that the same department should also license our installer's, to keep all of our licensing in one department. Our inspections should remain with the local government to help keep costs down for the State and the consumer. State licensing will help insure that the consumer gets a quality installation so they can enjoy their new home for years without further expenses.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Garrett L. Wright', is written over the typed name.

**Garrett L. Wright  
Vice President  
D & H Homes**

*Senate Commerce  
03/09/04  
Attach #6*



733 E. Hwy 54  
Liberal, KS 67901  
620-624-1981

March 4, 2004

Senator Karin Brownlee  
Chairwoman: Senate Committee on Commerce

Dear Senator Brownlee,

It is my understanding that HB2719-Kansas Manufactured Housing Act is scheduled for a hearing on March 9, 2004 and I would like to ask for your support on this bill. The citizens of Kansas need this bill to be passed and enacted into law so that the Federal government does not step in and bog down the system.

I do not ask your support without benefit to myself. I am a manufactured home retailer in Liberal, KS. My father started the company over 40 years ago. I grew up in the business and I have seen numerous changes in the homes and the people involved. When I was a young man, just about anyone could be called a Mobile Home Installer. The homes were not as large and complex as they are today. A person installing a new Manufactured Home must know what they are doing.

My business is currently licensed by the Department of Vehicles to do business. I feel that this Department also should be the one licensing home installers as it goes hand in hand with business licenses and my sales people's licenses.

In my opinion HB2719 levels the playing field for all Manufactured Home Retailers in Kansas. Currently, several counties and cities around the state require me to be licensed by them to install a manufactured home in their jurisdiction. To be licensed by all the counties and cities in Kansas would be cost prohibitive. HB2719 would make it where I would be licensed by the State of Kansas and could install manufactured homes anywhere in the state. It would also give me one standard to meet when installing the homes.

Another vital thing HB2719 does, in my opinion, is that it keeps control of Manufactured Homes Installations in the state. If Kansas does not enact a home installation standard then HUD will step in as required by federal law. This would be a horrific nightmare for everyone concerned. A consumer that did have a problem would have to work his/her way through the federal government to try and get the problem corrected. I do not know about you, but I would rather deal with someone where I could go in and talk face to face if needed. This would not even be an option if HUD takes over.

Again I ask you for your support on HB2719. If you would like to discuss anything about this I would be happy to visit with you. I may be reached at the following numbers:

620-624-1981 – Office Number    620-624-1984 – Fax Number    620-629-0765 – Cell Number

You can also email me at: [danny@lmhhomes.com](mailto:danny@lmhhomes.com)

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny Burtzloff', with a large, stylized flourish at the beginning.

Danny Burtzloff

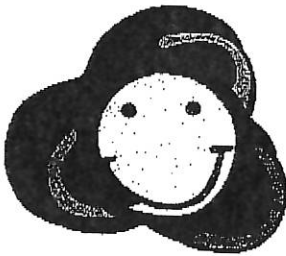
Toll Free 800-475-0054

E-Mail [info@lmhhomes.com](mailto:info@lmhhomes.com)

Fax 620-624-1984

Visit our Web Site [www.lmhhomes.com](http://www.lmhhomes.com)

Senate Commerce  
03/09/04  
Attach # 7



Village Homes

12249 S.W. Hwy 54, Augusta, Kansas 67010

316-733-9550 Phone 316-733-9553 Fax

March 4, 2004

Senator Karin Brownlee  
And Members Committee on Commerce  
State House  
Topeka, Kansas

Dear Chairwoman Brownlee:

My name is Dayne Rinehart, I am the President of Village Homes. I have been in the manufactured housing industry for the past 14 years. I have served on the Board of Directors for the Kansas Manufactured Housing Association for the past 5 years and have also worked on the Task Force for Installation Committee for the past 5 years.

I am writing to ask for your support of House Bill 2719. I feel that this bill provides our homebuyer the additional benefit of a quality home installation and maintains as much local control as possible. In 2000, President Clinton signed the Manufactured Housing Improvement Act which requires states to have a program in effect that trains and licenses manufactured housing installers and have a state installation standard along with a dispute resolution process by 2005.

I feel that House Bill 2719 adequately addresses all of these issues. It was drafted by several members of our association that have years of experience in our industry as far as production and installation is concerned.

In my opinion, the best place for our installers to be licensed is through the Department of Vehicles since all other areas of our industry are already licensed there.

In closing, for benefit of consumers seeking affordable housing and all members of the Kansas Manufactured Housing Association, I hope we can count on you for your support of Senate Bill 2719.

Thank you for your time.

Sincerely,

Dayne Rinehart  
President

Pawnee Development, Inc. d/b/a Village Homes, 12249 S.W. Hwy 54, Augusta, Kansas 67010

Senate Commerce  
03/09/04  
Attach #8



www.royal-durhamsupply.com

**To:** Senator Karin Brownlee, Chairwoman  
& Members of the Senate Committee on Commerce

**From:** Tom Byrne, Vice President  
Royal Supply Incorporated

**Date:** March 4, 2004

**RE: HB 2719- Kansas manufactured housing act; prescribing installation standards; providing for manufactured home installers' licenses; providing for apprentice installers' licenses; authorizing certain fees and civil penalties.**

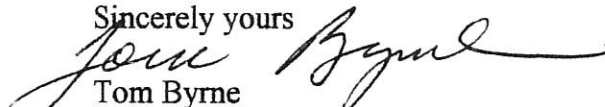
Royal Supply is a wholesale/retail distributor of manufactured housing parts and supplies for businesses and consumers in Kansas and has been in business since 1986. I have personally served on the Kansas Manufactured Housing installation task force since 1997.

I believe that HB 2719 contains the elements that meet the federal requirements set forth by the Manufactured Housing Act of 2000 while preserving local control for consumers, local government and this industry.

HB 2719 does not create a new agency, does provide for State licensing versus licensing by the Department of Housing and Urban Development and leaves inspections at the local government level. This bill also provides for licensing of installers by the Department of Vehicles which is where our current licensing and titling requirements resides.

I would appreciate your support for this House Bill.

Sincerely yours

  
Tom Byrne  
Royal Supply

Senate Commerce  
03/09/04  
Attach # 9

5116 S. Broadway • Wichita, Kansas 67216 • (316) 524-9335 • 1-800-777-7117 • FAX (316) 524-9336  
5900 N.E. Connecticut, Kansas City, MO 64120 • (816) 483-7979 • 1-800-729-2772 • FAX (816) 483-1914





# K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE  
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Commerce Committee  
Joan Wagnon

March 9, 2004  
**House Bill 2719**

Chairperson Senator Brownlee and Members of the Committee:

The Department opposes House Bill 2719, because the Director of Vehicles is not the appropriate person to regulate the manufactured housing industry. The Division of Vehicles issues driver's licenses and regulates the registration and titling of motor vehicles and motor vehicle dealer and salesperson licenses. We have no expertise in determining the competency of manufactured home installers seeking licenses or deciding whether manufactured housing has been properly and safely installed.

### **Proposed Amendments**

If the responsibility for regulating the manufactured housing industry is to be placed on the shoulders of the Director of Vehicles, then at a minimum, we need to be granted the proper authority and resources to accomplish the mission. The Director of Vehicles should have authority to inspect the installation activities of the licensees. Such authority is absent from the bill. The bill should expressly confer authority on Director to inspect any manufactured home installation in the state. Otherwise, this proposal serves no useful purpose.

Section 2 imposes on the Director the responsibility "to ensure that manufactured homes installed in the state of Kansas are installed in accordance with the requirements and purposes of the federal act." Yet, the Director is given no mechanism to accomplish that. Subsection 2(b) of the bill preempts local authority to regulate manufactured home installation, leaving municipalities only the ability to inspect installations for compliance with the federal standards, which the Director is somehow supposed to promulgate. The bill does not provide for any coordination or linkage between a municipality's installation inspection and the Director's regulatory authority. Subsection 4(b) allows municipalities to impose reasonable inspection fees, but gives the Director no such authority. Not all municipalities have inspection programs for manufactured home installations. In fact, many most likely do not. Without providing any inspection powers to the Director, the bill apparently intends that in areas where no municipal inspection program exists, manufactured home installations will not have any inspections at all. In the absence of a municipality inspection program, the Director needs authority to inspect the installation and impose reasonable inspection fees.

Please see the attached balloon amendments. First, we recommend adding the following language to the end of Subsection 2(b):

“The director shall have the authority to inspect any manufactured home installation in this state in order to determine that such installation and siting are in accordance with the standards promulgated pursuant to Section 3, and amendments thereto. The director may impose reasonable inspection fees therefor on the installer.”

Second, we recommend adding the following language to the end of Section 5:

“Any inspector for a municipality shall be certified by the director. The municipality shall report to the director any deficiencies noted in any such inspection. The director may rely on the municipality’s inspection for purposes of determining whether such installation is in compliance with the standards promulgated pursuant to Section 3, and amendments thereto.”

The above language provides the needed link between the inspection program at the municipality level (if there is one) and the Director, who this bill charges to ensure that manufactured homes are installed pursuant to the federal standards. Municipalities may inspect any manufactured home installed within the municipality’s jurisdiction only for compliance with the standards prescribed by the Director. The inspectors need to be certified by the Director, if they are determining compliance with the Director’s standards. Otherwise, the potential exists for lack of uniformity and conflicts between the interpretation of the Director’s standards and the municipalities’ established building codes and inspection standards.

The bill lacks any provision for penalties on an installer for failure to install or site a manufactured home pursuant to the federal standards. The Director is not even given authority to take action on the installer’s license for violations of those standards. The following language should be added as new Subsection 6(a)(5), which would give the Director authority to suspend or revoke an installer’s license, or impose civil penalties for failure to install a manufactured home in accordance with the required standards:

“(5) install or site a manufactured home in violation of the standards promulgated pursuant to Section 3, and amendments thereto.”

The bill requires the Director to promulgate the necessary regulations containing the federal uniform standards for installing and siting manufactured homes by January 1, 2005. It is our understanding that these standards are still in the drafting stage at the federal level. If this drafting project has not been completed by January 1, 2005, the Director will have no standards to implement. We recommend that the bill contain a sunset provision, adding the following language to the end of Section 13:

“If the federal regulations containing the uniform standards for proper installation and siting of manufactured homes are not finalized by December 31, 2004, the provisions of this act shall expire.”

### **Substantial Administration Costs**

The Department will either have to hire and train the necessary personnel to gain that expertise, or contract out for it. We are requesting authority to inspect installations, and we will need personnel and equipment to conduct those inspections state-wide at those locations where existing inspection programs do not exist at the municipality level.

The fiscal note we have submitted indicates first year start up costs for this program of \$321,220 and ongoing annual expenses of \$227,211 for the personnel, training, equipment and computer system (or resources to contract this work out) needed to implement this proposal.

1 under, and has been issued a manufactured home installer's license by the  
2 director.

3 (y) "Apprentice installer" means a person who is licensed as an ap-  
4 prentice installer pursuant to this act.

5 (z) "Municipality" means any city or county in this state.

6 New Sec. 2. (a) The purposes of sections 2 to 9, inclusive, and  
7 amendments thereto, are: (1) To ensure that manufactured homes in-  
8 stalled in the state of Kansas are installed in accordance with the require-  
9 ments and purposes of the federal act; (2) to ensure that persons installing  
10 manufactured homes in the state of Kansas are appropriately trained to  
11 do so; and (3) to provide for the promulgation of uniform standards which  
12 shall be applicable throughout the state to effect the foregoing.

13 (b) To accommodate realization of the purposes set forth in subsec-  
14 tion (a) of this section, the legislature hereby declares its intent to exercise  
15 the exclusive power to regulate the installation of manufactured homes  
16 and the persons who install manufactured homes. By the enactment of  
17 sections 2 to 9, inclusive, and amendments thereto, cities and counties  
18 are preempted from the exercise of such regulatory power, and any city  
19 ordinance or county resolution in conflict with or contrary to sections 2  
20 to 9, inclusive, and amendments thereto, shall be null and void, except  
21 that nothing in this act shall be construed as prohibiting a city or county  
22 from inspecting a manufactured home installed in this state after the  
23 effective date of this act for the sole purpose of determining that it has  
24 been installed in compliance with the standards promulgated pursuant to  
25 section 3, and amendments thereto.

26 New Sec. 3. The director shall adopt rules and regulations to prom-  
27 ulgate uniform standards for the proper installation and siting of manu-  
28 factured homes at the places of occupancy in this state. The standards  
29 promulgated shall take effect on January 1, 2005, and shall pertain to the  
30 foundation, support and anchoring systems, underpinning, heating, ven-  
31 tilation and air conditioning systems, utility hookups and joinder of sec-  
32 tions of such manufactured homes. The standards so promulgated shall  
33 be reasonable and shall be consistent with the standards established by  
34 or pursuant to the federal act. No person, other than the division, shall  
35 have authority to amend or alter the uniform standards so adopted.

36 New Sec. 4. (a) Except as otherwise provided in this section, any  
37 person installing manufactured homes in this state on or after January 1,  
38 2005, either shall hold a manufactured home installer's license issued  
39 pursuant to this section or shall work under the supervision of an au-  
40 thorized installer. Each such license shall be valid for a term of three  
41 years and may be renewed. The fee for such license and for each renewal  
42 thereof shall be \$300, which shall be paid to the division by the applicant.  
43 From and after January 1, 2005, the manufactured home installer's license

"The director shall have the authority to inspect any manufactured home installation in this state in order to determine that such installation and siting are in accordance with the standards promulgated pursuant to Section 3, and amendments thereto. The director may impose reasonable inspection fees therefor on the installer."

1 skills necessary to properly install manufactured homes; and (3) within  
2 the three years preceding the date the applicant submitted a license ap-  
3 plication to the division, the applicant had not less than two-years' expe-  
4 rience either as an installer licensed by any municipality or working under  
5 the supervision of an installer licensed by any municipality or as an ap-  
6 prentice installer working under the supervision of an authorized installer.

7 New Sec. 5. From and after January 1, 2005, a municipality may  
8 inspect or cause to be inspected by qualified individuals any manufactured  
9 home installed within the municipality's jurisdiction after the effective  
10 date of this act. Any such inspection shall be limited to a determination  
11 that the installation of the manufactured home complies with the instal-  
12 lation standards prescribed by the duly adopted rules and regulations of  
13 the director. A municipality may impose a reasonable fee to cover the  
14 costs of such inspection.

15 New Sec. 6. (a) No authorized installer, apprentice installer or ap-  
16 plicant for a manufactured home installer's license or apprentice in-  
17 staller's license shall:

- 18 (1) Violate any lawful order of the director;
- 19 (2) obtain a manufactured home installer's license by fraud or
- 20 misrepresentation;
- 21 (3) be convicted of or enter a plea of nolo contendere to a crime in
- 22 any jurisdiction which directly relates to the installation of manufactured
- 23 homes or the ability to install manufactured homes in that jurisdiction;
- 24 or
- 25 (4) commit fraud or deceit in the practice of manufactured home
- 26 installation contracting.

27 (b) Any person who violates any provision of subsection (a) shall be  
28 subject to any of the following actions by the director:

- 29 (1) License revocation;
- 30 (2) license suspension;
- 31 (3) a civil penalty not to exceed \$1,000 per violation;
- 32 (4) a requirement to take and pass, or retake and pass, the exami-
- 33 nation approved by the director;
- 34 (5) a notice of non-compliance; or
- 35 (6) refusal of license application.

36 New Sec. 7. (a) From and after January 1, 2005, no person shall:

- 37 (1) Falsely represent such person or any other person as an author-
- 38 ized installer or licensed apprentice installer;
- 39 (2) falsely impersonate an authorized installer or licensed apprentice
- 40 installer;
- 41 (3) present as such person's own the manufactured home installer's
- 42 license or apprentice installer's license of another;
- 43 (4) knowingly give false evidence to the division;

"Any inspector for a municipality shall be certified by the director. The municipality shall report to the director any deficiencies noted in any such inspection. The director may rely on the municipality's inspection for purposes of determining whether such installation is in compliance with the standards promulgated pursuant to Section 3, and amendments thereto."

"(5) install or site a manufactured home in violation of the standards promulgated pursuant to Section 3, and amendments thereto."

1 including that party's proportionate share of the mediator's fees and  
2 expenses.

3 (c) If the parties are not successful in resolving a dispute through  
4 negotiation and mediation, as provided in this section, any party may  
5 commence an action in district court to resolve the dispute.

6 New Sec. 10. Any civil penalties or fees paid to the director or di-  
7 vision pursuant to sections 2 to 9, inclusive, and amendments thereto,  
8 shall be remitted to the state treasurer in accordance with K.S.A. 75-  
9 4215, and amendments thereto. Upon receipt of each such remittance,  
10 the state treasurer shall deposit the entire amount in the state treasury  
11 to the credit of the vehicle dealers and manufacturers fee fund.

12 New Sec. 11. Sections 2 to 11, inclusive, and amendments thereto,  
13 shall be a part of and supplemental to the Kansas manufactured housing  
14 act.

15 Sec. 12. K.S.A. 2003 Supp. 58-4202 is hereby repealed.

16 Sec. 13. This act shall take effect and be in force from and after its  
17 publication in the Kansas register.

"If the federal regulations containing the uniform standards for proper installation and siting of  
manufactured homes are not finalized by December 31, 2004, the provisions of this act shall  
expire."

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