

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2719

By Committee on Commerce and Labor

2-4

10 AN ACT concerning the Kansas manufactured housing act; prescribing
11 installation standards; providing for manufactured home installers' li-
12 censes; providing for apprentice installers' licenses; authorizing certain
13 fees and civil penalties; amending K.S.A. 2003 Supp. 58-4202 and re-
14 pealing the existing section.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2003 Supp. 58-4202 is hereby amended to read as
18 follows: 58-4202. As used in the Kansas manufactured housing act:

19 (a) "Manufactured home" means a structure which:
20 ~~(1) is subject to the federal act, which is~~ transportable in one or more
21 sections which, in the traveling mode, is 8 body feet or more in width or
22 40 body feet or more in length, or, when erected on site, is 320 or more
23 square feet; and which is built on a permanent chassis and designed to
24 be used as a dwelling, with or without permanent foundation, when con-
25 nected to the required utilities, and includes the plumbing, heating, air
26 conditioning and electrical systems contained therein; ~~and~~
27 ~~(2) is subject to the federal manufactured home construction and~~
28 ~~safety standards established pursuant to 42 U.S.C. § 5403.~~

29 (b) "Mobile home" means a structure which:
30 (1) Is transportable in one or more sections which, in the traveling
31 mode, is 8 body feet or more in width and 36 body feet or more in length
32 and is built on a permanent chassis and designed to be used as a dwelling,
33 with or without a permanent foundation, when connected to the required
34 utilities, and includes the plumbing, heating, air conditioning and elec-
35 trical systems contained therein; and

36 (2) is not subject to the federal manufactured home construction and
37 safety standards established pursuant to 42 U.S.C. § 5403.

38 (c) "Modular home" means a structure which is: (1) Transportable in
39 one or more sections; (2) ~~not constructed on a permanent chassis;~~ (3)
40 designed to be used as a dwelling on a permanent foundation when con-
41 nected to the required utilities, and includes the plumbing, heating, air
42 conditioning and electrical systems contained therein; and ~~(4)~~ (3) certified
43 by its manufacturer as being constructed in accordance with a nationally

1 recognized building code.

2 (d) “Factory-built home” means a mobile home, manufactured home
3 or modular home.

4 (e) “Division” means the division of vehicles of the department of
5 revenue.

6 (f) “Director” means the director of vehicles, either acting directly
7 or through officers or agents of the division of vehicles of the department
8 of revenue.

9 (g) “Manufactured home dealer” or “dealer” means any person who,
10 for commission, money or other thing of value, is engaged in the business
11 of:

12 (1) Buying, selling or offering or attempting to negotiate a sale of an
13 interest in manufactured homes or mobile homes; or

14 (2) buying, selling or offering or attempting to negotiate a sale of an
15 interest in manufactured homes or mobile homes for other persons as an
16 agent, middleman or negotiator; or

17 (3) bringing together buyers and sellers of manufactured homes or
18 mobile homes.

19 (h) “New manufactured home dealer” means any manufactured
20 home dealer who is a party to a manufactured home sales agreement with
21 a manufactured home manufacturer, which manufactured home sales
22 agreement authorizes the manufactured home dealer to sell, exchange or
23 transfer new manufactured homes or parts and accessories made or sold
24 by such manufactured home manufacturer, and obligates the manufac-
25 tured home dealer to fulfill the warranty commitments of such manufac-
26 tured home manufacturer.

27 (i) “Used manufactured home dealer” means any person actively en-
28 gaged in the business of buying, selling or exchanging used manufactured
29 homes or mobile homes.

30 (j) “Manufactured home manufacturer” or “*manufacturer*” means
31 any person who manufactures, assembles and sells new manufactured
32 homes, *subject to regulation pursuant to the federal act*, to new manu-
33 factured home dealers for resale in this state, *whether such person is*
34 *located within or outside the state of Kansas*.

35 (k) “Salesperson” means any person who is employed as a salesperson
36 by a manufactured home dealer to sell manufactured homes or mobile
37 homes.

38 (l) “Factory representative” means a representative employed by a
39 manufactured home manufacturer for the purpose of making or promot-
40 ing the sale of its new manufactured homes to new manufactured home
41 dealers, or for advertising or contacting its new manufactured *home* deal-
42 ers with respect to the promotion and sale of manufactured homes and
43 parts or accessories for the same.

1 (m) “Manufactured home sales agreement” means a contract be-
2 tween the manufacturer of manufactured homes and a new manufactured
3 home dealer, by which the dealer is entitled to purchase new manufac-
4 tured homes from the manufacturer for resale within this state.

5 (n) “Broker” means any person who, for commission, money or other
6 thing of value, is engaged in the business of:

7 (1) Selling or buying manufactured homes or mobile homes for other
8 persons as an agent, middleman or negotiator; or

9 (2) bringing together buyers and sellers of manufactured homes or
10 mobile homes, but such term shall not include any person engaged in a
11 business in which the acts described in this subsection are only inciden-
12 tally performed.

13 (o) “Lending agency” means any person, desiring to be licensed un-
14 der this act and engaged in the business of financing or lending money
15 to any person to be used in the purchase or financing of a manufactured
16 home or mobile home.

17 (p) “Established place of business” means a building or structure,
18 other than a building or structure all or part of which is occupied or used
19 as a residence, owned either in fee or leased and designated as an office
20 or place to receive mail and keep records and conduct the routine of
21 business. To qualify as an established place of business, there shall be
22 located therein an operable telephone which shall be listed with the tel-
23 ephone company under the name of the licensee.

24 (q) “Supplemental place of business” means a business location other
25 than that of the established place of business.

26 (r) “Licensee” means any person issued a valid license pursuant to
27 the Kansas manufactured housing act.

28 (s) “Person” means any natural person, partnership, firm, corporation
29 or association.

30 (t) “Electronic certificate of title” means any electronic record of
31 ownership, including any lien or liens that may be recorded, retained by
32 the division in accordance with K.S.A. 2003 Supp. 58-4204a, and amend-
33 ments thereto.

34 (u) “*Federal act*” means the national manufactured housing construc-
35 tion and safety standards act of 1974 (42 U.S.C. §§ 5401 et seq., and
36 amendments thereto), as constituted on the effective date of this act.

37 (v) “*Installer*” means a person engaged in the business of installing
38 manufactured homes on behalf of such person, or on behalf of any other
39 person who has not been issued a manufactured home installer’s license
40 under this act.

41 (w) “*Installation standards*” mean the standards adopted by the di-
42 rector for the installation and siting of manufactured homes.

43 (x) “*Authorized installer*” means an installer who has met the require-

1 *ments set forth in this act and rules and regulations promulgated here-*
2 *under, and has been issued a manufactured home installer's license by the*
3 *director.*

4 (y) *“Apprentice installer” means a person who is licensed as an ap-*
5 *prentice installer pursuant to this act.*

6 (z) *“Municipality” means any city or county in this state.*

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

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

27 New Sec. 3. The director shall adopt rules and regulations to prom-
28 ulgate uniform standards for the proper installation and siting of manu-
29 factured homes at the places of occupancy in this state. The standards
30 promulgated shall take effect on January 1, ~~2005~~ **2006**, and shall pertain
31 to the foundation, support and anchoring systems, underpinning, heating,
32 ventilation and air conditioning systems, utility hookups and joinder of
33 sections of such manufactured homes. The standards so promulgated
34 shall be reasonable and shall be consistent with the standards established
35 by or pursuant to the federal act. No person, other than the division, shall
36 have authority to amend or alter the uniform standards so adopted.

37 New Sec. 4. (a) Except as otherwise provided in this section, any
38 person installing manufactured homes in this state on or after January 1,
39 ~~2005~~ **2006**, either shall hold a manufactured home installer's license is-
40 sued pursuant to this section or shall work under the supervision of an
41 authorized installer. Each such license shall be valid for a term of three
42 years and may be renewed. The fee for such license and for each renewal
43 thereof shall be \$300, which shall be paid to the division by the applicant.

1 From and after January 1, ~~2005~~ **2006**, the manufactured home installer's
2 license issued pursuant to this section shall be the only authority required
3 for the installation of manufactured homes within this state. The manu-
4 factured home installer's license shall entitle an authorized installer to
5 install manufactured homes in this state, including the installation of heat-
6 ing and air conditioning systems and the hookup of electric, gas and water
7 utilities from the utility meters to the manufactured home.

8 (b) On or after January 1, ~~2005~~ **2006**, no municipality may impose
9 any additional licensing requirements or require the payment of an ad-
10 ditional or separate fee as a condition for the installation of a manufac-
11 tured home within its boundaries by an authorized installer, except that
12 nothing herein shall be construed as prohibiting a municipality from re-
13 quiring a building permit as a condition precedent to the installation of a
14 manufactured home and charging a fee in connection with such building
15 permit, or prohibiting a municipality which provides for the inspection of
16 manufactured homes installed in this state, from imposing a reasonable
17 inspection fee.

18 (c) Nothing in this act shall be construed to require a person who
19 installs a new or previously owned manufactured home on property
20 owned by such person, for occupancy by such person, to obtain a man-
21 ufactured home installer's license. However, none of the rights, remedies
22 or causes of action provided under sections 2 to 8, inclusive, and amend-
23 ments thereto, shall be available to any such person.

24 (d) Except as otherwise provided in subsection (h), in order to obtain
25 a manufactured home installer's license, an applicant shall:

- 26 (1) Be at least 18 years of age;
- 27 (2) complete an installation training course approved by the director;
- 28 (3) submit an application for a license on a form prescribed and fur-
29 nished by the division;
- 30 (4) submit with the license application the required license fee and
31 examination fee, unless the examination fee is to be submitted directly to
32 a person who administers an examination certified by the director, as
33 provided in subsection (f) of this section;
- 34 (5) pass the examination specified in this section as being designed
35 to test the skills necessary to properly install manufactured homes and to
36 ascertain that the applicant has adequate knowledge of the laws applicable
37 to manufactured home installation contracting;
- 38 (6) not have been found responsible in any administrative action by
39 the division for any violation of the Kansas manufactured housing act or
40 any rules or regulations promulgated thereunder;
- 41 (7) submit with the license application proof satisfactory to the di-
42 rector that, within the three years preceding the date the license appli-
43 cation is submitted to the division, the applicant has not less than two-

1 years' experience as an installer; and

2 (8) carry liability insurance in an amount determined by the director
3 pursuant to duly adopted rules and regulations, but such liability insur-
4 ance shall have limits of not less than \$100,000, and such liability insur-
5 ance must insure the authorized installer and any apprentice installer
6 working under the supervision of the authorized installer.

7 (e) Except as otherwise provided in subsection (f), the director shall
8 establish a standard examination for determining the competency of ap-
9 plicants to become authorized installers, based upon codes and standards
10 in effect on the effective date of this act. In developing the standard
11 examination, the director may consult with: (1) Persons who are recog-
12 nized in the industry for testing persons to determine their qualifications
13 to install manufactured homes and to ascertain that such persons have
14 adequate knowledge of the laws applicable to manufactured home in-
15 stallation contracting; or (2) persons recognized in the industry as having
16 developed installation standards or providing courses or programs to ed-
17 ucate installers regarding installation of manufactured homes in compli-
18 ance with installation standards. For such purpose, the director may enter
19 into consulting agreements with such persons.

20 (f) In lieu of developing a standard examination pursuant to subsec-
21 tion (e), the director may certify one or more examinations developed by
22 persons recognized in the industry either for testing persons to determine
23 their qualifications to install manufactured homes, for having developed
24 installation standards or for having provided courses or programs to ed-
25 ucate installers regarding installation of manufactured homes in compli-
26 ance with installation standards. The director may solicit from persons
27 meeting the foregoing qualifications the submission of examinations for
28 the director's review. Any person responding to such solicitation shall
29 submit to the director an application for certification. The application
30 form shall be prepared by the director and shall accompany the written
31 solicitation for submission of examinations. The application for certifica-
32 tion shall provide the following information:

33 (1) The name and address of the person submitting the application;

34 (2) information substantiating the qualifications of the person sub-
35 mitting the application;

36 (3) the amount of the examination fee to be charged an applicant for
37 a manufactured home installer's license;

38 (4) a statement as to how, when and where the examination would
39 be administered to an applicant for a manufactured home installer's
40 license;

41 (5) the basis for determining passage of the examination; and

42 (6) such other information as the director may require. A copy of the
43 examination for which certification is requested shall accompany the

1 application.

2 If any application for certification of an examination is properly com-
3 pleted and timely received by the director in response to the director's
4 solicitation, the director shall determine if the examination submitted is
5 designed to determine that an applicant for a manufactured home in-
6 staller's license has the skills necessary to properly install manufactured
7 homes and to ascertain that the applicant has adequate knowledge of the
8 laws applicable to manufactured home installation contracting. Any ex-
9 amination satisfying these criteria shall be certified by the director.

10 An applicant for a manufactured home installer's license shall be fur-
11 nished by the division with a list of the examinations which have been
12 certified by the director pursuant to this subsection. The list shall include
13 all of the information necessary to taking each of the certified examina-
14 tions, including the amount of the examination fee to be paid directly to
15 the person administering the examination by the applicant for a manu-
16 factured home installer's license. The applicant must successfully com-
17 plete one of the certified examinations on the list.

18 (g) Any person engaged by an authorized installer to assist in the
19 installation of a manufactured home, including an apprentice installer, at
20 all times shall work under the supervision of an authorized installer. The
21 authorized installer shall be responsible for all acts or omissions of ap-
22 prentice installers and other persons working under the authorized in-
23 staller's supervision in the installation of a manufactured home.

24 (h) A person may obtain a license as an apprentice installer from the
25 division. In order to obtain an apprentice installer's license, an applicant:

- 26 (1) Must be at least 18 years of age;
- 27 (2) must complete an installation training course approved by the
28 director;
- 29 (3) must submit an application for a license on a form prescribed and
30 furnished by the division;
- 31 (4) must submit with the license application a license application fee
32 in the amount of \$50; and
- 33 (5) must not have been found responsible in any administrative action
34 by the division for any violation of the Kansas manufactured housing act
35 or any rules or regulations promulgated thereunder.

36 An apprentice installer's license shall be valid for one year, but may be
37 renewed upon application to the director on a form prescribed by the
38 division and payment of a renewal license fee of \$50.

39 (i) An applicant for a license as an authorized installer shall not be
40 required to take the examination required by this section in order to
41 obtain a manufactured home installer's license, if the director finds that:
42 (1) The applicant is currently licensed as an installer by a municipality;
43 (2) prior to January 1, ~~2005~~ **2006**, the applicant had successfully com-

1 pleted an examination administered by any municipality that is designed
2 to test the skills necessary to properly install manufactured homes; and
3 (3) within the three years preceding the date the applicant submitted a
4 license application to the division, the applicant had not less than two-
5 years' experience either as an installer licensed by any municipality or
6 working under the supervision of an installer licensed by any municipality
7 or as an apprentice installer working under the supervision of an author-
8 ized installer.

9 New Sec. 5. From and after January 1, ~~2005~~ **2006**, a municipality
10 may inspect or cause to be inspected by qualified individuals any manu-
11 factured home installed within the municipality's jurisdiction after the
12 effective date of this act. Any such inspection shall be limited to a deter-
13 mination that the installation of the manufactured home complies with
14 the installation standards prescribed by the duly adopted rules and reg-
15 ulations of the director. A municipality may impose a reasonable fee to
16 cover the costs of such inspection.

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

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

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

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

38 New Sec. 7. (a) From and after January 1, ~~2005~~ **2006**, no person
39 shall:

- 40 (1) Falsely represent such person or any other person as an author-
41 ized installer or licensed apprentice installer;
- 42 (2) falsely impersonate an authorized installer or licensed apprentice
43 installer;

1 (3) present as such person's own the manufactured home installer's
2 license or apprentice installer's license of another;

3 (4) knowingly give false evidence to the division;

4 (5) use or attempt to use any manufactured home installer's license
5 or apprentice installer's license that has been suspended or revoked, or
6 that has expired or is otherwise invalid; or

7 (6) engage in the business of or act in the capacity of an authorized
8 installer or licensed apprentice installer without being an authorized in-
9 staller or licensed apprentice installer, as the case may be.

10 (b) Any person who violates any of the provisions of subsection (a)
11 shall be subject to a civil penalty of not to exceed \$1,000 per violation. If
12 the director determines that any person violating any provision of sub-
13 section (a) is not licensed under section 4, and amendments thereto, and
14 is not working under the supervision of an authorized installer, the di-
15 rector may request the attorney general to file an action in a court of
16 competent jurisdiction, to enjoin that person from engaging in unauthor-
17 ized activities.

18 New Sec. 8. From and after January 1, ~~2005~~ **2006**, whenever the
19 director has reason to believe that an authorized installer, an apprentice
20 installer or an applicant for a manufactured home installer's license or
21 apprentice installer's license is in violation of any provision contained in
22 sections 2 to 7, inclusive, and amendments thereto, or any rule or regu-
23 lation adopted thereunder, the director, either upon the director's own
24 motion or upon complaint, may hold a hearing for the purpose of deter-
25 mining whether any of the actions authorized by subsection (b) of section
26 6, and amendments thereto, is warranted. The hearing shall be conducted
27 and any action taken by the director pursuant to the hearing shall be in
28 accordance with the provisions of the Kansas administrative procedure
29 act.

30 New Sec. 9. (a) Any dispute arising under the Kansas manufactured
31 housing act between an owner of a manufactured home and any one or
32 more of the following persons shall be resolved by negotiation, mediation
33 or, if necessary, by court action, as provided in this section: Manufacturer,
34 dealer, broker, authorized installer or apprentice installer.

35 (b) If any party submits to the other party or parties a written request
36 to negotiate the dispute, the parties shall first negotiate in good faith to
37 resolve each such dispute. If each such dispute has not been resolved by
38 negotiation within 60 days after the date of the written request to nego-
39 tiate the dispute, then upon the written request of any party to the other
40 party or parties, the parties shall agree upon an independent, qualified
41 mediator to assist the parties in the resolution of each such dispute. If
42 the parties are unable to agree upon a mediator within 30 days after such
43 written request, then any party may submit to the director a written re-

1 quest that the director appoint a mediator, and the director shall appoint
2 an independent, qualified mediator to assist the parties in the resolution
3 of each such dispute. Each party involved in the mediation of a dispute
4 under this section shall be responsible for that party's costs of mediation,
5 including that party's proportionate share of the mediator's fees and
6 expenses.

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

10 New Sec. 10. Any civil penalties or fees paid to the director or di-
11 vision pursuant to sections 2 to 9, inclusive, and amendments thereto,
12 shall be remitted to the state treasurer in accordance with K.S.A. 75-
13 4215, and amendments thereto. Upon receipt of each such remittance,
14 the state treasurer shall deposit the entire amount in the state treasury
15 to the credit of the vehicle dealers and manufacturers fee fund.

16 New Sec. 11. Sections 2 to 11, inclusive, and amendments thereto,
17 shall be a part of and supplemental to the Kansas manufactured housing
18 act.

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

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