

IN THE SENATE

SENATE BILL NO. 1299

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO MANUFACTURED HOMES; AMENDING SECTION 44-2101, IDAHO CODE, TO
2 REMOVE REFERENCE TO RESALE BROKERS, SALESMEN, AND RESPONSIBLE MANAG-
3 ING EMPLOYEES, TO REMOVE A PROVISION REGARDING ORIGINAL RETAILERS AND
4 RESALE BROKERS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
5 44-2101A, IDAHO CODE, TO REMOVE CERTAIN DEFINITIONS AND TO REVISE A
6 DEFINITION; AMENDING SECTION 44-2102, IDAHO CODE, TO REVISE PROVISIONS
7 REGARDING RULEMAKING, TO REMOVE REFERENCE TO RESALE BROKERS AND SALES-
8 MEN, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 44-2103, IDAHO
9 CODE, TO REMOVE REFERENCE TO RESALE BROKERS, SALESMEN, AND RESPONSIBLE
10 MANAGING EMPLOYEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
11 44-2106, IDAHO CODE, TO REMOVE REFERENCE TO RESALE BROKERS, SALESMEN,
12 AND RESPONSIBLE MANAGING EMPLOYEES, TO REVISE A PROVISION REGARDING VI-
13 OLATIONS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 44-2107,
14 IDAHO CODE, TO REMOVE REFERENCE TO RESALE BROKERS AND RESPONSIBLE
15 MANAGING EMPLOYEES; AMENDING SECTION 44-2108, IDAHO CODE, TO REMOVE
16 REFERENCE TO RESALE BROKERS; AND AMENDING SECTION 44-2202, IDAHO CODE,
17 TO REMOVE REFERENCE TO RESPONSIBLE MANAGING EMPLOYEES AND TO MAKE A
18 TECHNICAL CORRECTION.
19

20 Be It Enacted by the Legislature of the State of Idaho:

21 SECTION 1. That Section 44-2101, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 44-2101. PURPOSE -- LICENSE REQUIRED -- REINSTATEMENT. (1) The leg-
24 islature finds that the regulation and control of those persons engaged in
25 the business of manufacturing, selling or installing manufactured and mo-
26 bile homes is necessary to protect the health and safety of the citizens of
27 Idaho. To that end, it shall be unlawful for any person to engage in business
28 as a manufacturer, retailer, ~~resale broker, or installer, salesman or re-~~
29 ~~sponsible managing employee~~ without being duly licensed as provided in this
30 chapter.

31 (2) ~~All applicants for original retailer or resale broker licenses are~~
32 ~~required to submit to a fingerprint-based criminal history background check~~
33 ~~of the Idaho central criminal database and the federal bureau of investiga-~~
34 ~~tion criminal history database. Each applicant for original licensure must~~
35 ~~submit a full set of the applicant's fingerprints and the fees to cover the~~
36 ~~cost of the criminal history background check for such person along with the~~
37 ~~completed application.~~

38 (3) If the licensee fails to submit a completed application for renewal
39 or to pay the renewal fee on or before the expiration date, the administrator
40 may accept a later application for reinstatement subject to such conditions
41 as the board may require by rule including, but not limited to, the assess-
42 ment of a late fee; provided that between the license expiration date and the

1 date of reinstatement of the license, the rights of the licensee under such
 2 license shall be expired, and, during such period of expiration, it shall be
 3 unlawful for such licensee to do or attempt to offer to do any of the acts of
 4 the kind and nature described in the definitions in section 44-2101A, Idaho
 5 Code, in consideration of compensation of any kind or expectation thereof.
 6 An expired license that is not reinstated within six (6) months of the expi-
 7 ration date shall be automatically terminated by the administrator and may
 8 not be reinstated.

9 SECTION 2. That Section 44-2101A, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 44-2101A. DEFINITIONS. As used in this chapter:

12 (1) "Administrator" means the administrator of the division of build-
 13 ing safety of the state of Idaho.

14 (2) "Board" means the factory built structures advisory board estab-
 15 lished in section 39-4302, Idaho Code.

16 (3) "Engaged in the business" means the individual or entity buys,
 17 sells, brokers, trades, or offers for resale a manufactured or mobile home.

18 (4) "Installer" means a person who owns a business that installs a manu-
 19 factured home or mobile home at the site where it is to be used for occupancy.

20 (5) "Manufactured home" or "manufactured house" means a structure as
 21 defined in section 39-4105, Idaho Code.

22 (6) "Manufacturer" means any person engaged in the business of manufac-
 23 turing manufactured homes that are offered for sale, lease or exchange in the
 24 state of Idaho.

25 (7) "Mobile home" means a structure as defined in section 39-4105,
 26 Idaho Code.

27 (8) "Person" means a natural person, corporation, partnership, trust,
 28 society, club, association or other organization.

29 (9) "Place of business" refers to any physical location at which the
 30 business is lawfully conducted.

31 ~~(10) "Resale broker" means any person engaged in the business of selling~~
 32 ~~broker-owned, used, third-party owned, or other resale of manufactured or~~
 33 ~~mobile homes.~~

34 ~~(11) "Responsible managing employee" or "RME" means the person desig-~~
 35 ~~nated by the retailer, installer, manufacturer or resale broker to supervise~~
 36 ~~other employees, either personally or through others.~~

37 ~~(12) "Retailer" means any person engaged in the business of selling or~~
 38 ~~exchanging new, used, resale, third-party-owned, or brokered manufactured~~
 39 ~~or mobile homes.~~

40 ~~(13) "Salesman" means any person employed by a retailer or resale broker~~
 41 ~~for a salary, commission or compensation of any kind to sell, list, purchase~~
 42 ~~or exchange or to negotiate for the sale, listing, purchase or exchange of~~
 43 ~~new, used, brokered or third-party owned units, except as otherwise provided~~
 44 ~~in this chapter.~~

45 SECTION 3. That Section 44-2102, Idaho Code, be, and the same is hereby
 46 amended to read as follows:

1 44-2102. ADMINISTRATION -- POWERS AND DUTIES. The administrator is
2 charged with the administration of the provisions of this chapter and shall:

3 (1) In accordance with the provisions of chapter 52, title 67, Idaho
4 Code, promulgate, adopt, amend, and repeal necessary rules for the estab-
5 lishment of a mandatory statewide manufactured home setup code. The admin-
6 istrator ~~shall~~ may also define and prohibit any practice which is found to be
7 deceptive.

8 (2) Prescribe the form and content of a new manufactured home buyer's
9 information and disclosure form. Unless otherwise provided by the adminis-
10 trator, the form shall be presented by the retailer to each purchaser of a new
11 manufactured home, and shall be executed by the retailer and purchaser at the
12 time the initial purchase order is signed for the sale of a new manufactured
13 home.

14 (3) (a) A used unit ~~which~~ that has been determined to be or declared by
15 the owner to be real property under the provisions of section 63-304,
16 Idaho Code, may be offered for sale, listed, bought for resale, negoti-
17 ated for, either directly or indirectly, by a licensed real estate bro-
18 ker or a real estate salesman representing a licensed real estate bro-
19 ker, but not a retailer, ~~resale broker or salesman~~.

20 (b) A used unit ~~which~~ that has been determined to be and is carried
21 on the tax rolls as personal property may be offered for sale, listed,
22 bought for resale, negotiated for, either directly or indirectly, by a
23 licensed real estate broker or a real estate salesman, pursuant to chap-
24 ter 20, title 54, Idaho Code, or by a licensed retailer, ~~resale broker~~
25 ~~or salesman~~, but with respect to a licensed retailer, ~~resale broker or~~
26 ~~salesman~~ only to the extent such sale does not involve the purchase or
27 sale of an interest in real estate.

28 (c) A licensed real estate broker or real estate salesman representing
29 a licensed real estate broker, pursuant to chapter 20, title 54, Idaho
30 Code, may participate in new manufactured home sales that include real
31 estate if the real estate broker or salesman has a valid, written agree-
32 ment with a licensed retailer to represent the interests of the retailer
33 in this type of transaction.

34 (4) Promulgate rules establishing a program for the timely resolution
35 of disputes between manufacturers, retailers, ~~resale brokers~~ and installers
36 of manufactured homes. The rules shall be consistent with the United States
37 department of housing and urban development's procedural and enforcement
38 authority in 42 U.S.C. 5422(c) (12), and shall include identifying the re-
39 spective responsibilities of manufacturers, retailers, ~~resale brokers~~ and
40 installers; providing for the issuance of appropriate orders for the correc-
41 tion or repair of defects in manufactured homes that are reported during the
42 one (1) year period following the date of installation; and may include an
43 appropriate schedule of fees.

44 SECTION 4. That Section 44-2103, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 44-2103. FEES -- DEPOSIT OF FEES. (1) Fees for licensing of retailers,
47 ~~resale brokers~~, installers, and manufacturers, ~~salesmen and RMEs~~ shall not
48 exceed:

49 (a) Retailer ~~or resale broker~~ license \$500.00

- 1 (b) Manufacturer license\$500.00
 2 (c) Installer license \$300.00
 3 ~~(d) Salesman license \$50.00~~
 4 ~~(e) RME license \$50.00~~

5 (2) All license fees collected by the division of building safety under
 6 the provisions of this chapter shall be paid into the factory built struc-
 7 tures account established in section 39-4303, Idaho Code. The expenses in-
 8 curred in administering and enforcing the provisions of this chapter shall
 9 be paid from the account.

10 (3) The following performance bonding requirements shall be met before
 11 the issuance of these licenses:

- 12 (a) Manufacturer \$20,000 bond
 13 (b) Retailer \$40,000 bond
 14 (c) ~~Resale broker \$30,000 bond~~
 15 ~~(d) Installer \$5,000 bond~~

16 (4) The administrator is authorized to provide by rule, in accordance
 17 with the provisions of section 44-2102, Idaho Code, for the acceptance of a
 18 deposit of cash or securities in lieu of a bond in satisfaction of the bonding
 19 requirements of this section.

20 (5) Fees and bond requirements of this section shall be the exclusive
 21 fee and bond requirements for retailers, ~~resale brokers,~~ installers, and
 22 manufacturers and ~~salesmen~~ governed by the provisions of this chapter, and
 23 shall supersede any program of any political subdivision of the state ~~which~~
 24 that sets fee or bond requirements for the same services.

25 (6) A retailer ~~or resale broker~~ must obtain a separate installer li-
 26 cense, pay the license fee set forth in subsection (1) (c) of this section and
 27 meet the bonding requirements of subsection (3) ~~(d)~~ of this section in order
 28 to provide the services covered by an installer license.

29 SECTION 5. That Section 44-2106, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 44-2106. VIOLATIONS. (1) It shall be unlawful to engage in business as
 32 a manufacturer, retailer, ~~resale broker,~~ or installer, ~~salesman or RME~~ with-
 33 out being duly licensed by the division of building safety pursuant to this
 34 chapter, except that an individual may buy, sell, broker, trade or offer for
 35 resale up to two (2) manufactured or mobile homes, or a combination thereof,
 36 in any one (1) calendar year without being licensed under this chapter if all
 37 of the units have been properly titled in the name of that individual.

38 (2) It shall be unlawful for a manufacturer, retailer, ~~resale broker,~~
 39 installer, ~~salesman or RME~~ those employed by such to:

- 40 (a) Intentionally publish or circulate any advertising ~~which that~~ is
 41 misleading or inaccurate in any material particular or ~~which that~~ mis-
 42 represents any of the products or services sold or provided by a manu-
 43 facturer, retailer, ~~resale broker,~~ or installer, ~~salesman or RME~~;
 44 (b) Violate any of the provisions of this chapter or any rule adopted by
 45 the division of building safety pursuant to this chapter;
 46 (c) Knowingly purchase, sell or otherwise acquire or dispose of a
 47 stolen manufactured or mobile home;
 48 (d) With respect only to a retailer ~~or resale broker,~~ to engage in the
 49 business for which such retailer ~~or resale broker~~ is licensed without at

1 all times maintaining a principal place of business located within the
2 state.

3 SECTION 6. That Section 44-2107, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 44-2107. PENALTY PROVISIONS. (1) Whoever shall violate any of the
6 provisions of this chapter, or any laws or rules adopted pursuant to this
7 chapter, or who shall refuse to perform any duty lawfully enjoined upon him
8 by the administrator within the prescribed time, or who shall fail, neglect,
9 or refuse to obey any lawful order given or made by the administrator, shall
10 be guilty of a misdemeanor and shall be subject to the civil penalties es-
11 tablished by administrative rule but not to exceed one thousand dollars
12 (\$1,000) in accordance with the following:

13 (a) Each day of such violation shall constitute a separate offense. A
14 violation will be considered a second or additional offense only if it
15 occurs within one (1) year from the first violation.

16 (b) The same penalties shall apply, upon conviction, to any member of a
17 copartnership, or to any construction, managing or directing officer of
18 any corporation, limited liability company or limited liability part-
19 nership or other such organization consenting to, participating in, or
20 aiding or abetting any such violation of this chapter.

21 (c) Proceedings related to the imposition of civil penalties shall be
22 governed by the provisions of chapter 52, title 67, Idaho Code.

23 (2) In addition to any other penalties specified in this section, when-
24 ever any person violates the provisions of this chapter by acting as a re-
25 tailer, ~~resale broker, or installer or RME~~, without a license, the adminis-
26 trator may maintain an action in the name of the state of Idaho to enjoin the
27 person from any further violations in accordance with the following:

28 (a) Such action may be brought either in the county in which the acts
29 are claimed to have been or are being committed, in the county where the
30 defendant resides, or in Ada county.

31 (b) Upon the filing of a verified complaint in the district court, the
32 court, if satisfied that the acts complained of have been or probably
33 are being or may be committed, may issue a temporary restraining order
34 and/or preliminary injunction, without bond, enjoining the defendant
35 from the commission of any such act or acts constituting the violation.

36 (c) A copy of the complaint shall be served upon the defendant and the
37 proceedings shall thereafter be conducted as in other similar civil ac-
38 tions. If the commission of the act or acts is established, the court
39 shall enter a decree permanently enjoining the defendant from commit-
40 ting such act or acts. If an injunction issued under this section is vi-
41 olated, the court, or the judge thereof at chambers, may summarily try
42 and punish the offender for contempt of court.

43 SECTION 7. That Section 44-2108, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 44-2108. ~~RETAILER AND RESALE BROKER~~ -- ADDITIONAL LICENSURE REQUIRE-
46 MENTS. (1) Each business office or retail sales location shall be owned
47 or leased by the retailer ~~or resale broker~~ and shall comply with all local

1 building codes, zoning, and other applicable land use regulatory ordi-
2 nances, and:

3 (a) If the location is on leased property, the retailer ~~or resale bro-~~
4 ~~ker~~ must provide written confirmation of the term and existence of the
5 lease, signed by the lessor; and

6 (b) An exterior sign that identifies the retailer ~~or resale broker~~ by
7 the name shown on the license must be prominently affixed to the loca-
8 tion or the office building and be clearly visible and easily readable
9 from the nearest major avenue of traffic; and

10 (c) The retailer ~~or resale broker~~ must prominently display his license,
11 or a true and correct copy of that license, in each location; and

12 (d) The licensee must post, in a clearly visible and readily accessible
13 location, written information concerning regular hours of business and
14 emergency contact information.

15 (2) Regardless of the number of locations at which a retailer ~~or resale~~
16 ~~broker~~ engages in business, he must maintain a principal place of business
17 that complies with the requirements set forth in subsection (1) (a) of this
18 section, and at which the records of the business are maintained on a perma-
19 nent basis.

20 (3) The retailer ~~or resale broker~~ must promptly notify the division of
21 building safety, in writing, of any change in ownership, business name, lo-
22 cation of business, mailing address or telephone numbers.

23 (4) For each new product sold, the retailer must provide proof, satis-
24 factory to the board, of the retailer's current authority to sell that manu-
25 facturer's products.

26 (5) Failure to adhere to the requirements of this section, or any other
27 requirement pertaining to licensure as set forth in law or rule, shall con-
28 stitute grounds for the imposition of discipline up to and including revoca-
29 tion of licensure.

30 SECTION 8. That Section 44-2202, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 44-2202. INSTALLATION PERMITS AND INSPECTIONS REQUIRED. (1) The owner
33 or the installer of a mobile or manufactured home must obtain an installa-
34 tion tag and permit as applicable before installing a mobile or manufactured
35 home that will be used as a residence on a building site or in a park. The in-
36 staller's license must be in effect at the time of the application for the in-
37 stallation permit.

38 (2) Installation tags shall be obtained from the division of building
39 safety and are required for each installation of a new manufactured home.
40 The fee for the installation tag shall be prescribed in administrative rules
41 promulgated by the administrator of the division of building safety.

42 (3) Installation permits shall be issued by the division of building
43 safety or a city or county that has by ordinance adopted a building code and
44 whose installation inspection programs have been approved by the division.
45 All installations shall be inspected by the authority having jurisdiction
46 for compliance.

47 (4) Permit fees shall be prescribed in administrative rules pro-
48 mulgated by the administrator of the division of building safety or as

1 established by the city or county having jurisdiction and whose installation
2 inspection program has been approved by the division, as applicable.

3 (5) Immediately upon completion of the installation of a mobile or man-
4 ufactured home, a licensed installer ~~or the responsible managing employee of~~
5 ~~the licensed installer~~ shall perform an inspection of the completed instal-
6 lation to ensure compliance with the applicable installation standard. Such
7 inspection shall be recorded on an inspection record document approved by
8 the division and a copy shall be provided to the homeowner upon completion of
9 the inspection.