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HEALTH AND SAFETY CODE - HSC

DIVISION 13. HOUSING [17000 - 19997] (*Division 13 enacted by Stats. 1939, Ch. 60.*)

PART 2. MANUFACTURED HOUSING [18000 - 18153] (*Heading of Part 2 amended by Stats. 2007, Ch. 540, Sec. 2.*)

CHAPTER 3. Enforcement [18020 - 18024.6] (*Chapter 3 added by Stats. 1981, Ch. 975, Sec. 3.*)

18020. (a) Except as provided in Section 18027.3, and except as provided by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), as it applies to the manufacture of new manufactured housing, the department shall enforce this part and the rules and regulations adopted pursuant to this part.

(b) The department may, at the department's sole option, enforce Chapter 4 (commencing with Section 18025) and the rules and regulations adopted pursuant to Chapter 4 through department-approved third-party entities. The department shall adopt regulations for the approval of third-party entities, including, but not limited to, all of the following criteria:

- (1) Freedom from any conflict of interest.
- (2) Qualifications of personnel.
- (3) Frequency of inspections or monitorings of manufacturer quality control.
- (4) Involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2.
- (5) Any other conditions of operation that the department may reasonably require.

(c) The department may require rotation of third-party entities performing inspection services for any manufacturing facility within the state to prevent the third-party entity from either performing inspections within the same facility for more than 365 calendar days or performing inspections for any facility when the third-party entity performed inspection services within the previous 365 calendar days.

(d) The department shall monitor the performance of third-party entities approved pursuant to subdivision (b) and shall require periodic reports in writing containing information that the department may reasonably require to determine compliance with the conditions of the department's approval.

- (1) When the department receives information about an alleged inadequacy in the performance of a third-party entity, including any involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2, it shall consider the information in its monitoring efforts and make a determination about the validity of the alleged inadequacy in a timely manner.
- (2) When the department determines, either through its monitoring efforts or through information provided by any other person, that an approved third-party entity has failed to perform according to the conditions of approval, the department may withdraw approval by forwarding written notice to the approved third-party entity by registered mail to its address of record, briefly summarizing the cause for the department's decision.
- (3) A third-party entity, upon having its approval withdrawn by the department, may request a hearing before the director of the department. The request for hearing shall be in writing and either delivered or postmarked prior to midnight on the 10th calendar day from the date of the department's notice.
- (4) The department, upon timely receipt of a written request for hearing, shall, within 30 calendar days, schedule a hearing before the director or his or her agent. All hearings pursuant to this subdivision shall be held in the department's Sacramento offices and the decision of the director shall be final.

(5) A third-party entity whose approval has been withdrawn by the department shall not be permitted to reapply for the department's approval pursuant to subdivision (b) for a period of one year from the date that the approval was withdrawn by the department.

(6) A third-party entity whose approval has been withdrawn more than once by the department shall not be permitted to reapply for department approval pursuant to subdivision (b) for a period of not less than one year from the date that the department's approval was last withdrawn.

(7) No third-party entity shall perform the activities required by Section 18013.2 unless it has the approval of the department.

(e) (1) Upon finding a violation of subdivision (b) on the part of a third-party entity, the director shall issue citations and levy administrative fines. Each citation and fine assessment shall be in writing and describe the particulars for the citation. The citation and fine assessment shall be issued not later than six months after discovery of the violation.

(2) The fine for a first violation shall be at least five hundred dollars (\$500) and shall not exceed one thousand dollars (\$1,000). The fine for a second violation shall be at least two thousand dollars (\$2,000) and shall not exceed four thousand dollars (\$4,000). The fine for a third violation shall be at least five thousand dollars (\$5,000), and shall not exceed ten thousand dollars (\$10,000). The fines shall be assessed for each day the violation occurs. If a third-party entity has been cited more than three times during a 365-day period, the approval to conduct inspections on behalf of the department shall be suspended for a minimum of one year.

(3) The third-party entity may request an administrative hearing on the citation or fine. If the party fails to request a hearing within 30 days and does not pay the fine, the approval to perform inspections shall be automatically revoked, until the time that the department finds that the circumstances that led to the citation have been corrected and the fines have been paid.

(4) Upon review of the findings from the administrative hearing, the director may modify, rescind, or uphold the citation and fine assessment. The decision of the director shall be served by regular mail.

(5) The fines shall be paid into the Housing and Community Development Fund, which is hereby created in the State Treasury, and shall be used, when appropriated by the Legislature, to offset the department's costs to administer this part.

(f) The remedies provided in this part to any aggrieved party are not exclusive and shall not preclude the applicability of any other provision of law.

(Amended by Stats. 1999, Ch. 83, Sec. 107. Effective January 1, 2000.)

18020.5. (a) Any person who knowingly violates any provision of this part or any rule or regulation issued pursuant to this part, except for a violation of any federal manufactured home or mobilehome construction and safety standard for which a penalty is provided in Section 18021, is guilty of a misdemeanor, punishable by a fine not exceeding two thousand dollars (\$2,000), by imprisonment not exceeding 30 days, or by both.

(b) Notwithstanding Section 801 of the Penal Code, the one-year period for filing an indictment or an information or complaint with respect to any misdemeanor in subdivision (a) by a licensee in the first sale or lease of any manufactured home, mobilehome, or commercial coach to a consumer shall commence on the date that the manufactured home, mobilehome, or commercial coach is delivered to the consumer.

(Amended by Stats. 1998, Ch. 293, Sec. 3. Effective January 1, 1999.)

18021. (a) Any person who knowingly violates any provision of Section 5409 of Title 42 of the United States Code, or any regulation or final order issued thereunder as it exists on the effective date of this section in this state, shall be liable to the state for a civil penalty of not to exceed one thousand dollars (\$1,000) for each violation. Each violation of a provision of Section 5409 of Title 42 of the United States Code, or any regulation or order issued thereunder, as it exists on the effective date of this section shall constitute a separate violation with respect to each manufactured home or mobilehome, or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

(b) Any individual or a director, officer, or agent of a corporation, who knowingly violates Section 5409 of Title 42 of the United States Code as it exists on the effective date of this section in this state in a manner which threatens the health and safety of any purchaser, shall be subject to a state fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or by both such a fine and imprisonment.

(Amended by Stats. 1983, Ch. 1076, Sec. 16.)

18021.5. (a) Any person who knowingly violates any of the provisions of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, is guilty of a misdemeanor, punishable by a fine not exceeding two thousand dollars (\$2,000) or by imprisonment not exceeding 30 days, or by both.

(b) The department, after notice and hearing, may suspend or revoke the license issued to a licensee, as provided for by this part, who knowingly violates any of the provisions of this part. In any hearing before a judge or in any administrative action before an administrative law judge, the department may seek and may recover its investigative and enforcement costs from the licensee unless the licensee prevails on the charges. The department may also seek fines and may seek restitution as provided in subdivision (d).

(c) Any person who knowingly violates any provision of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, shall be liable for a civil penalty not exceeding two thousand dollars (\$2,000) for each violation or for each day of a continuing violation. The department shall institute or maintain an action in a court of appropriate jurisdiction to collect any civil penalty arising under this section.

(d) In addition to the other remedies provided in this section, the department may pursue any other remedies provided for in this part and may seek restitution for any monetary loss to a purchaser, seller, licensee, financing agency, governmental agency, or other person or entity suffering a monetary loss as a result of a violation of this part.

(e) In any disciplinary hearing before an administrative law judge concerning licensing, upon request of the department and pursuant to appropriate proof, the administrative law judge shall make the following findings:

(1) The amount of the actual and direct monetary loss to any person or entity as a result of fraud, willful misrepresentation, or breach of warranty or guarantee by the respondent.

(2) The amount of the department's investigative and enforcement costs up to and including the date of the hearing, including, but not limited to, charges imposed by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(Amended by Stats. 1988, Ch. 1289, Sec. 1. Effective September 26, 1988.)

18021.6. Nothing in this part shall be construed as precluding the application of any other provision of the penal laws of this state to any transaction involving fraud, misrepresentation, forgery, or deceit which violates this part.

(Added by Stats. 1984, Ch. 1342, Sec. 5.5. Effective September 26, 1984. Operative January 1, 1985, by Sec. 39 of Ch. 1342.)

18021.7. (a) (1) In addition to other remedies provided in this part, the Director of Housing and Community Development or his or her designee may issue a citation that assesses a civil penalty payable to the department to any licensee who violates subdivision (d) of Section 18020, Section 18021.5, 18026, 18029.6, or 18030, subdivision (b) of Section 18032, Section 18035, 18035.1, 18035.2, 18035.3, 18036, 18039, 18045, 18045.5, 18045.6, 18046, or 18058, subdivision (a) of Section 18059, subdivision (b) of Section 18059.5, subdivision (c) of Section 18060, subdivision (c) of Section 18060.5, Section 18061, subdivision (d), (i), or (j) of Section 18061.5, subdivision (a) or (b) of Section 18062, subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 18062.2, subdivision (c) of Section 18063, Section 18080.5, or paragraph (2) of subdivision (f) of Section 18802.

(2) A violation of subdivision (d) of Section 18060.5 is also cause for citation if both the dealer and the manufacturer receive written notice of a warranty complaint from the complainant, from the department, or another source of information, and, at a minimum, the 90-day period provided for correction of substantial defects pursuant to Section 1797.7 of the Civil Code has expired.

(3) Each citation and related civil penalty assessment shall be issued no later than one year after discovery of the violation.

(4) A violation of paragraph (2) of subdivision (f) of Section 18802 shall result in a civil penalty in the amount of two hundred fifty dollars (\$250) for each violation.

(b) (1) Except as provided in paragraph (2), the amount of any civil penalty assessed pursuant to subdivision (a) shall be one hundred dollars (\$100) for each violation, but shall be increased to two hundred fifty dollars (\$250) for each subsequent violation of the same prohibition for which a citation for the subsequent violation is issued within one year of the citation for the previous violation. The violation or violations giving cause for the citation shall be corrected if applicable, and payment of the civil penalty shall be remitted to the department within 45 days of the date of issuance of the citation. Civil penalties received by the department pursuant to this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund.

(2) (A) For violations of subdivision (d) of Section 18020, or Section 18026, the department shall assess the civil penalties in a range between two hundred fifty dollars (\$250) and two thousand dollars (\$2,000). When determining the amount of the assessed civil penalty, the department shall take into consideration whether one or more of the following or similar circumstances apply:

(i) The citation includes multiple violations.

(ii) The cited person has a history of violations of the same or similar provisions of this division and the regulations promulgated under this division.

(iii) In the judgment of the department, the person has exhibited bad faith or a conflict of interest.

(iv) In the judgment of the department, the violation is serious or harmful.

(v) The citation involves a violation perpetrated against a senior citizen, veteran, or person with disabilities.

(B) If a citation lists more than one violation and each of the violations relates to the same manufacturing facility or client, the total penalty assessment in each citation shall not exceed ten thousand dollars (\$10,000).

(C) If a citation lists more than one violation, the amount of assessed civil penalty shall be stated separately for each section violated.

(c) Any person or entity served a citation pursuant to this section may petition for, and shall be granted, an informal hearing before the director or his or her designee. The petition shall be a written request briefly stating the grounds for the request. Any petition to be considered shall be received by the department within 30 days of the date of issuance of the citation.

(d) Upon receipt of a timely and complying petition, the department shall suspend enforcement of the citation and set a time and place for the informal hearing and shall give the licensee written notice thereof. The hearing shall commence no later than 30 days following receipt of the petition or at another time scheduled by the department pursuant to a request by the licensee or department if good and sufficient cause exists. If the licensee fails to appear at the time and place scheduled for the hearing, the department may notify the licensee in writing that the petition is dismissed and that compliance with terms of the citation shall occur within 10 days after receipt of the notification.

(e) The department shall notify the petitioner in writing of its decision and the reasons therefor within 30 days following conclusion of the informal hearing held pursuant to this section. If the decision upholds the citation, in whole or in part, the licensee shall comply with the citation in accordance with the decision within 30 days after the decision is mailed by the department.

(f) Nothing in this section shall be construed to preclude remedies available under other provisions of law.

(Amended by Stats. 2018, Ch. 774, Sec. 1. (AB 3066) Effective January 1, 2019.)

18022. (a) The director, and other representatives of the department designated by him or her, shall enforce those provisions of law committed to the administration of the department pursuant to this part.

(b) Any person designated in subdivision (a) may inspect any manufactured home, mobilehome, commercial coach, or truck camper of a type required to be registered under this code, or any component part thereof, in any garage, repair shop, parking lot, new or used sales facility, manufacturer's facility, display facility, or any other establishment engaged in the business of selling, repairing, or displaying manufactured homes, mobilehomes, commercial coaches, or truck campers, or the integral parts thereof, for the purpose of investigating the title and registration of the manufactured home, mobilehome, commercial coach, or truck camper, or the sales practices thereof.

(Amended by Stats. 1984, Ch. 1527, Sec. 8.)

18022.5. (a) Whenever the director determines through an investigation that any person has violated this part, or any regulation, order, license, permit, decision, demand, or requirement or any part or provision thereof issued pursuant to this part, the director may bring an action in the name of the people of the State of California against that person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

In the action, an order or judgment may be entered awarding a preliminary or final injunction as may be proper.

If the director makes a showing satisfactory to the court that the violation or threatened violation jeopardizes funds and properties of others in the custody or under the control of the defendant, the court may appoint a receiver for management of the business of the defendant, including, but not limited to, the funds and properties of others in his or her possession or may make any other order as it deems appropriate to protect and preserve those funds and properties.

(b) The director may include in any action authorized by subdivision (a), a claim for restitution on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award appropriate relief to those persons.

(Added by Stats. 1987, Ch. 707, Sec. 1.)

18023. (a) The director, and any other representatives of the department designated by the director, shall have the powers of peace officers only for the purpose of service of warrants or documents and for the cooperation with other law enforcement agencies in the collection of information.

(b) The department shall notify any concerned governmental agency whenever it is determined by investigation that an escrow agent has done any of the following:

- (1) Violated Section 18035, 18035.2, or applicable administrative rules and regulations.

(2) Engaged in loan fraud.

(3) Submitted false information to the department for the purposes of titling and registration of a manufactured home or mobilehome.

(Amended by Stats. 1990, Ch. 865, Sec. 1.)

18024. (a) If, upon inspection or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is acting in the capacity, or engaging in the business, of a dealer within this state without having a license in good standing therefor, and the person is not otherwise exempt pursuant to subdivision (b) of Section 18002.6, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order of abatement and assessment of a civil penalty not to exceed two thousand dollars (\$2,000). All civil penalties collected under this section shall be deposited in the Mobilehome-Manufactured Home Revolving Fund provided for in Section 18016.5.

(b) The department may adopt regulations prescribing procedures for issuance of citations under this section and covering the assessment of a civil penalty which shall give due consideration to the gravity of the violation, the good faith of the person cited, and any history of previous violations.

(c) The sanctions authorized under this section shall be separate from, and in addition to, all other civil or criminal remedies.

(Amended by Stats. 2004, Ch. 567, Sec. 3. Effective January 1, 2005.)

18024.2. A citation under Section 18024 shall be issued by the department within three years after the act or omission which is the basis for the citation.

(Added by Stats. 1983, Ch. 752, Sec. 2.)

18024.3. Any person served with a citation under Section 18024 may appeal to the department within 30 days from the receipt of the citation with respect to violations alleged, scope of the order of abatement, or amount of civil penalty assessed. The citation shall inform the person served that an appeal is required to be filed within 30 days of receipt by the person of the citation. The citation shall be delivered by personal service or substitution.

(Added by Stats. 1983, Ch. 752, Sec. 3.)

18024.4. If, within 30 days from receipt of the citation, the person cited fails to notify the department that he or she intends to appeal the citation, the citation shall be deemed final. However, the person cited may obtain judicial review in accordance with Section 11523 of the Government Code. The person cited shall receive court costs and attorney's fees if he or she prevails. The 30-day period may be extended by the department for good cause.

(Added by Stats. 1983, Ch. 752, Sec. 4.)

18024.5. If the person cited under Section 18024 timely notifies the department that he or she intends to contest the citation, the department shall afford an opportunity for a hearing. The department shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(Added by Stats. 1983, Ch. 752, Sec. 5.)

18024.6. After the exhaustion of the review procedures provided for in Sections 18024.3 to 18024.5, inclusive, the department may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(Added by Stats. 1983, Ch. 752, Sec. 6.)