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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 7.5. Manufactured Home Recovery Fund [18070 - 18070.7] (*Heading of Chapter 7.5 amended by Stats. 1992, Ch. 1206, Sec. 1.*)

18070. (a) The Legislature finds and declares all of the following:

- (1) The financial hardship endured by someone who is buying or selling a manufactured home for the purpose of using it for a primary residence is more profound than the hardship of someone who is selling or purchasing a manufactured home for investment purposes.
- (2) It is, therefore, the intent of the Legislature in enacting this chapter that any claims for primary residences submitted, pursuant to this chapter, by a claimant for payment from the fund shall be given priority over claims submitted for investment purposes.
- (3) The distinctions made in this chapter between claims made for personal residential purposes and claims made for investment purposes shall reflect the priorities set forth in this paragraph.
- (4) The costs of seeking and obtaining civil judgments and related collection efforts to support claims for compensation often exceed the ability of claimants and the amounts received.
- (5) The costs and efforts of public entities obtaining criminal or administrative restitution orders could provide further benefits if these orders could be used as the basis for compensation claims.

(b) The following definitions shall apply for the purposes of this chapter:

(1) "Actual and direct loss" includes the following:

(A) The amount of the actual and direct loss, interest at the statutory rate from the date of loss, plus court costs and reasonable attorney's fees incurred in pursuit of the judgment, not to exceed 25 percent of the amount of the judgment, if the claim is based on a judgment obtained by a private attorney or an attorney employed by a nonprofit corporation, and not to exceed 35 percent of the amount of the judgment if the claim is based on a judgment obtained by an attorney employed by a public agency.

(B) The amount of the actual and direct loss, if the claim is not based on a judgment. However, the claimant may collect actual and reasonable costs incurred in pursuit of compensation including attorney's fees not exceeding 15 percent of the amount of the claim and court costs, if any.

"Actual and direct loss" does not include any punitive damages or damages awarded for negligent or intentional infliction of emotional distress.

(2) "Claimant" does not include a person holding a lien on, or a person possessing a secondary interest in, a manufactured home.

(3) "Conversion" means the unlawful appropriation of the property of another.

(4) "Judgment" means any of the following:

(A) A final judgment in a court of competent jurisdiction, other than a court in another state, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of

the United States Code.

(B) An order of the director, including an order for restitution, based on an accusation filed pursuant to Article 3 (commencing with Section 18058) of Chapter 7, after an opportunity for a hearing.

(5) "Complaint" means the facts of the underlying transaction upon which the criminal restitution order or administrative order is based.

(6) "Judgment debtor" means any defendant who is the subject of the criminal restitution order or civil judgment, any respondent who is the subject of an administrative accusation and order, or any person responsible for any violation upon which payment is made, as determined by the department.

(c) There is hereby created in the State Treasury the Manufactured Home Recovery Fund. The money in the fund shall be used only for the purposes of this chapter, including payment of the department's administrative costs incurred pursuant to this chapter. The department's costs may include any investigative costs incurred under this chapter, costs incurred to render a decision pursuant to Section 18070.3, and costs incurred in defending a decision on appeal.

(d) The moneys in the fund may be invested pursuant to Chapter 3 (commencing with Section 16430) of Part 2 of Division 4 of Title 2 of the Government Code. All income derived from investments of the fund shall be returned to the fund by the Treasurer as the income is earned.

(e) Notwithstanding Section 13340 of the Government Code, the moneys in the fund are hereby continuously appropriated to make the payments and distributions required by this chapter.

(Amended by Stats. 2005, Ch. 22, Sec. 119. Effective January 1, 2006.)

18070.1. (a) On and after January 1, 1985, before a dealer's license is issued or renewed, each applicant shall pay a fee of two hundred fifty dollars (\$250).

(b) (1) The fee required by subdivision (a) shall not be collected more than once. In addition, each dealer shall pay a fee of one hundred dollars (\$100) for each additional business location operated by the dealer and for each new business location.

(2) In addition, before a salesperson's license is issued or renewed, each applicant shall pay a fee of twenty-five dollars (\$25). This fee shall not be collected more than once.

(c) For each sale of a manufactured home reported to the department, a fee not to exceed ten dollars (\$10) shall be collected by the department for deposit in the Manufactured Home Recovery Fund prior to the issuance of a new registration.

(Amended by Stats. 1992, Ch. 1206, Sec. 2. Effective January 1, 1993.)

18070.2. (a) Fees for the establishment and operation of the Manufactured Home Recovery Fund shall be collected on or after January 1, 1985. Claims against the fund arising from sales which occur after January 1, 1985, may not be submitted to the department before January 1, 1986. For purposes of this section, the date of sale shall be either of the following:

(1) The date escrow closes for sales by dealers that are subject to Section 18035 or 18035.2.

(2) For all other sales, including sales by dealers in which escrow does not close, the date when the purchaser has paid the purchase price or, in lieu thereof, has signed a security agreement, option to purchase, or purchase contract and has taken physical possession or delivery of the manufactured home.

(b) Notwithstanding any other provision of law, whenever the balance in the Manufactured Home Recovery Fund exceeds two million dollars (\$2,000,000) on January 1 of any year, the department may reduce the fee provided for in subdivision (c) of Section 18070.1. The department may again increase the fee up to a maximum of ten dollars (\$10) whenever the balance in the fund falls below one million dollars (\$1,000,000).

(Amended by Stats. 2011, Ch. 239, Sec. 3. (SB 562) Effective January 1, 2012.)

18070.3. (a) When any person (1) who has purchased a manufactured home for a personal or family residential or investment purpose or (2) who has sold a manufactured home for a personal or family residential or investment purpose, obtains a final judgment against any manufactured home manufacturer, manufactured home dealer or salesperson, or other seller or purchaser, and the judgment is based on the grounds of (1) failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of the product sold or purchased, (4) conversion, (5) any willful violation of any other provision of this part, including the provisions regulating escrow accounts, or regulations adopted pursuant to this part, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after

January 1, 1985, the person, upon termination of all proceedings, including appeals, may file a claim with the department for an order directing payment out of the fund for the amount of actual and direct loss in the transaction.

(b) If any person either purchases a manufactured home used for a personal or family residential or investment purpose from, or sells a manufactured home used for a personal or family residential or investment purpose to, a person or entity who is or has been the subject of a bankruptcy proceeding, the person may file a claim with the department for an order directing payment out of the fund for the actual and direct loss in the transaction based on (1) the failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of product purchased or sold, (4) conversion, (5) willful violation of any other provision in this part, including the provisions regulating escrow accounts, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after January 1, 1985.

(c) (1) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

(2) The maximum payment ordered under this section, with respect to any one sales transaction on a new or used manufactured home, shall be the amount of the actual and direct loss, as determined by the department based on information in the possession of the department and information provided by the claimant or claimants. In no event shall the actual payment relating to a single transaction exceed seventy-five thousand dollars (\$75,000).

(3) Notwithstanding any other provision of this chapter, a person who purchases or sells a manufactured home for an investment purpose may receive payment from the fund for that purpose only once. A person who has received payment from the fund for the purchase or sale of a manufactured home for an investment purpose shall henceforth be ineligible to make a claim under this chapter, either as a natural person or as a member of a partnership, as an officer or director of a corporation, as a member of a marital community, or in any other capacity.

(d) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, diligently pursued collection efforts against all the assets of the judgment debtor, or presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but is not limited to, a description of the searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have assets applied to satisfy the judgment.

(2) If the claim is not based on a final judgment, presented evidence satisfactory to the department of either of the following:

(A) That the person or entity is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (c) in the amount that the claimant or claimants recover from the fund.

(B) That the claimant's claim is consistent with this chapter and the claimant had presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but not be limited to, a description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets eligible to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(3) If the claim is based upon a violation of a provision within a warranty provided pursuant to Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, demonstrated evidence satisfactory to the department that the claimant has been denied full compensation or correction under the warranty after the claimant has attempted to exercise his or her rights pursuant to the warranty.

(e) A claim against the fund shall be filed with the department within the following time periods:

(1) If the claim is based on a final judgment, within two years from the date of the judgment.

(2) If the claim is not based on a final judgment, within two years from the termination of bankruptcy proceedings or two years from the date of sale as determined by subdivision (a) of Section 18070.2, or within two years of discovery of the violations causing actual and direct losses pursuant to this article but no longer than five years after the date of sale as determined by subdivision (a) of Section 18070.2, whichever event occurs later.

(f) When any person files a claim for an order directing payment from the fund, the claimant shall mail, by first-class mail, a copy of that claim to the last known address of the judgment debtor. The department shall conduct a review of the application and other

pertinent information in its possession, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (e), inclusive, subject to the limitations of subdivisions (a) to (e), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor, the bankrupt person or entity, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (e).

(3) That the claimant has satisfied the applicable requirements of subdivision (d).

(4) That, if the claimant is a seller of a manufactured home used by the seller for personal, family, or household purposes, the claimant made a good faith effort to adequately secure the debt resulting from the sale of the manufactured home and with respect to which the claim is made. For purposes of this paragraph, a good faith effort to secure the debt may be demonstrated by, but shall not be limited to, providing the department with a promissory note signed by the debtor and which, pursuant to the terms thereof, is secured by collateral with a reasonable value at least equal to the debt evidenced by the promissory note.

(g) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

(h) In dispersing moneys from the fund, the department is authorized to give priority to claimants who have attempted to purchase or sell a manufactured home for a personal or family residential purpose.

(i) All claims to the fund that are received on or after January 1, 1993, shall be processed, and a determination made, within one year of submission of a properly completed application.

(j) The department, upon request by a Member of the Legislature, shall provide the following information: the number of claims to the fund, number of claims processed and decided within one year of their application date and submission of a properly completed application, the amount of fund money paid to claimants, and the amount of fund money allocated for the department's costs.

(Amended by Stats. 2007, Ch. 166, Sec. 2. Effective January 1, 2008.)

18070.4. The judgment debtor shall be liable for repayment in full for the amount arising from claims against the debtor which are paid from the fund, with interest at the prevailing prime rate. A discharge in bankruptcy shall not relieve a person from the disabilities and penalties of this section.

(Added by Stats. 1984, Ch. 1442, Sec. 4.)

18070.5. When the department has caused payment to be made from the fund to any person, the department shall be subrogated to the rights of that person.

(Amended by Stats. 2004, Ch. 236, Sec. 4. Effective January 1, 2005.)

18070.6. (a) To the extent that department personnel and resources are available, in any administrative action brought by the department pursuant to Article 3 (commencing with Section 18058) of Chapter 7, the department shall make reasonable efforts to plead and prove facts and allegations and request findings and conclusions necessary to support an order of restitution that may be deemed a final judgment.

(b) A person for whose benefit an order of restitution or other financial award has been granted by the director pursuant to this section may waive his or her rights to any additional compensation from the fund arising out of a transaction and submit a claim based on that administrative order to the fund after demonstrating efforts to collect pursuant to subdivision (d) of Section 18070.3.

(c) An order for restitution by the director pursuant to this section shall not exceed the amount of restitution ordered or approved by an administrative law judge in an administrative action brought by the department.

(Amended by Stats. 2005, Ch. 595, Sec. 11. Effective January 1, 2006.)

18070.7. The amendments to this chapter by the act adding additional grounds or procedures for recovery from the fund shall apply to any transaction for which the statute of limitation established by subdivision (e) of Section 18070.3 has not expired on January 1, 2004.

(Added by Stats. 2004, Ch. 236, Sec. 6. Effective January 1, 2005.)