



Department of Consumer and Business Services

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Before the
House Committee on Consumer Protection and Government Efficiency

SB 189A

Testimony of
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Division of Finance and Corporate Securities
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For the record, my name is David C. Tatman. I am the Administrator of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services. I am here today to testify in support of Senate Bill 189A, a concept to address fraud in the sale of manufactured structures. The bill was amended in the Senate to clarify a couple of points and address a concern of the Oregon Manufactured Housing Association, who testified in support of the concept. The bill passed the full Senate with a 28-0 vote, and is now before you today.

The purpose of the bill is to ensure that persons who engage in fraud in selling manufactured structure homes to Oregonians are prevented from jumping from company to company after harming consumers. This bill would allow the agency to impose a bar on such persons from working in the industry in certain circumstances.

While we would not anticipate using this authority very often, we have recently encountered two situations that demonstrate the need for this tool to protect Oregonians.

We learned of a large-scale failure by a manufactured structure dealer that occurred after the end of the 2011 legislative session. A large manufactured structure dealer operating out of Missouri and central Oregon, Fuqua Homes, closed its remaining manufacturing operations in Oregon in July 2011 but continued to sign purchase agreements for new structures. By August 2011, we received complaints that the company had continued to take in deposits for homes that could not be built. After further investigation, we learned that the company took in over \$500,000 of deposits from October 2008 to August 2011. Despite these deposits, we learned that manufactured structures were not being built or delivered, and deposits were not being refunded.

Oregon law does not address situations where a business entity loses a license and the person behind the business reenters the industry under a new, corporate identity with the same key people that perpetuated fraud on consumers. It is entirely possible that today key corporate personnel that made day-to-day decisions about sales and the completion of orders at Fuqua Homes could return to work at a new manufactured structure dealer and begin anew. We have seen a similar pattern in the construction trades, where a person could move from contractor license to contractor license to remain in business. The Building Codes Division within our department can bar individuals from reentering the construction trades.

Just recently we learned of an individual in Central Oregon that was misrepresenting the costs associated in siting MSDs and keeping the difference as

a ‘referral fee.’ Although the person was fired in this instance, we understand that that the individual had engaged in similar offenses with other dealers and keeps moving on to new companies. This bill is aimed at stopping people like this. Our investigation is currently ongoing but it appears to be another example of when a bar from the manufactured structure dealer business would be a useful tool.

But we are also mindful that manufactured structures represent attainable, affordable housing to many Oregonians and a bar for any violation of the manufactured structured dealers’ law might create more issues for manufactured structure dealers honestly operating under the law. So in order to ensure that bad actors are held accountable for fraud, we are asking for authority to pinpoint sanctions against those key individuals who made misrepresentations of material fact to a buyer or defrauded a buyer.

The concept is straightforward: SB 189A allows the Department of Consumer and Business Services to ban a person from either obtaining a manufactured structure dealer license or working in an administrative or managerial capacity for a dealer if they knowingly make false statements, engage in acts meant to defraud consumers, or file false information with the department. Even though we view disqualification as a remedy for very serious infractions, the A-engrossed version of the bill clarifies that the department would take action against only those individuals that acted or failed to act in a way that was central to the violation. Additionally, the A-engrossed bill grants the department flexibility to bar key people from re-entering the manufactured structure dealer business; there may be situations where a dealer is as harmed by a key person’s conduct as a consumer.

A person that violates more technical aspects of the manufactured structure dealer statutes could not be subject to a ban. For instance, under current law a corporate entity that does not meet the requirements for a trip permit or fails to finish filling out ownership documents can currently face a ban, but under this concept the ban is reserved for fraud or misrepresentations about sales transactions.

Even though we believe the Administrative Procedures Act affords due process protections to anyone subject to an administrative order by a state agency, the A-engrossed version makes it clear that any proposed ban would have to go through the contested case process.

If a person receives a ban under this proposed law, the A-engrossed bill allows the department to apply the penalty for seven years from the date of the order. In the mortgage lending business, an individual cannot be granted a loan originator license if the individual had been convicted of fraud or another crime that required an act of dishonesty occurring seven years before the time of application. We believe it is appropriate that the same consumer protection standards concerning apply to manufactured housing transactions as well as more traditional, site-built housing transactions.

The A-engrossed bill ensures that a banned person is fully banned and not able to get back into the industry through a low-level position. Our experiences with oversight over a wide variety of financial service providers lead us to believe that allowing a person subject to a ban to continue to work in any capacity in the manufactured structure industry might lead to situations where a person is directing a company's affairs in everything but name only. If we have to take the extraordinary step of ordering a ban, it seems appropriate that the person not participate in the sale of manufactured structure dealer at all.

Other laws administered by the Department of Consumer and Business Services already authorize the Director to institute individual bans – for example, the regulation of banks, credit unions, licensed mortgage loan originators, and securities broker-dealer salespersons.

If it turns out that making consumers whole would be a better remedy than a ban, this bill allows payment of restitution to harmed consumers as an alternative to a ban. Our chief concern is that consumers either receive the structures for which they signed a contract or receive refunds for deposits that did not end up going toward the construction or purchase of a manufactured structure.

In the Senate, we worked with stakeholders representing the manufactured structure dealers, dwelling park owners, landlord/tenant coalitions, and others on the concept. I ask for your support of this bill and would be happy to answer any questions.