



Department of Consumer and Business Services

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Before the
Senate General Government, Consumer & Small Business Protection

SB 189

Testimony of
David C. Tatman, Administrator
Division of Finance and Corporate Securities
Department of Consumer and Business Services

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 189, a concept to address fraud in the sale of manufactured structures.

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 occurred after 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 on 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 other corporate officers making day-to-day decisions about completing orders Fuqua Homes could re-license as a 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 the 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 this he has done 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 an another example of when a bar from the MSD industry would be a useful tool.

But we are also mindful that manufactured structures represent attainable, affordable housing to many Oregonians and one-size-fits-all regulation may 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: as it currently reads, SB 189 allows the Department of Consumer and Business Services to ban a person from working in an administrative or managerial capacity if they knowingly make false statements, engage in acts meant to defraud consumers, or file false information with the department. A person that violates more technical aspects of the manufactured structure dealer statutes could not be subject to a ban. For instance, a corporate entity that does not meet the requirements for a trip permit or fails to finish can currently face a ban under law, but under this concept the ban is reserved for fraud or misrepresentations about sales transactions.

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 will not end up going toward the construction or sale of a manufactured structure.

We have reached out to stakeholders representing the manufactured structure dealers, dwelling park owners, landlord/tenant coalitions, and others about the concept. In working with representatives of the manufactured structure dealers, we would like to propose amendments to clarify how we would issue orders under this section. While the Administrative Procedures Act (ORS chapter 183) provides due process protections to anyone subject to an administrative order by a state agency, we are proposing an amendment to make it clear that a person cannot be banned without the opportunity to challenge our basis for the ban. We are also proposing that not just anyone could be banned – though we view disqualification as a remedy for very serious infractions, we’re clarifying that a person must have acted or failed to act in a way that was central to the violation.

We are also proposing an amendment to lengthen the ban from five years to seven years. 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. We would also propose that the concept offer flexibility to bar only 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.

As introduced, our concept stated that a person banned from key decision-making positions within a corporate entity with a manufactured structure dealer license could still work in a clerical or support capacity. However, our experiences with financial 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 MSD 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.

I ask for your support of this bill and would be happy to answer any questions.