

House Bill 3106

Sponsored by Representative MCKEOWN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates requirement that person licensed to sell manufactured structures deliver bond or letter of credit to Director of Department of Consumer and Business Services if person is real estate licensee in good standing and in compliance with requirement to acquire and maintain errors and omissions insurance.

A BILL FOR AN ACT

1
2 Relating to the licensing of manufactured structure dealers; creating new provisions; and amending
3 ORS 446.726 and 446.746.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 446.726 is amended to read:

6 446.726. (1) **Notwithstanding the requirement in ORS 446.691, 446.696, 446.701 or 446.706 to**
7 **deliver to the Director of the Department of Consumer and Business Services a bond or**
8 **letter of credit that meets the requirements of this section, an applicant for issuance or re-**
9 **newal of a manufactured structure dealer license is not required to deliver a bond or letter**
10 **of credit to the director if the applicant is also a real estate licensee, as defined in ORS**
11 **696.010, in good standing and in compliance with any requirement to acquire and maintain**
12 **insurance for errors and omissions.**

13 [(1)] (2) A bond or letter of credit required to qualify for issuance or renewal of a manufactured
14 structure dealer license under ORS 446.691 or 446.696, [or] a temporary manufactured structure
15 dealer license under ORS 446.701 **or a limited manufactured structure dealer license under ORS**
16 **446.706** must comply with the following requirements:

17 (a) The bond must have a corporate surety licensed to do business within this state. A letter
18 of credit must be an irrevocable letter of credit issued by an insured institution.

19 (b) The bond or letter of credit must:

20 (A) Be executed to the State of Oregon;

21 (B) Be in the sum of \$40,000 for each year the license is valid, **except that a bond or letter**
22 **of credit required under ORS 446.706 must be in the sum of \$15,000 for each year the license**
23 **is valid;**

24 (C) Be in a form approved by the director [*of the Department of Consumer and Business*
25 *Services*];

26 (D) Be conditioned that the dealer will conduct the manufactured structure dealership without
27 fraud or fraudulent representation and without violating any statute or rule relating to manufac-
28 tured structure dealers, manufactured structure dealerships, transfers of interests in manufactured
29 structures, alteration of manufactured structures or moving manufactured structures;

30 (E) Be separate from any bond or letter of credit covering business activities other than dealing

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 in manufactured structures; and

2 (F) Be filed and held by the director.

3 [(2)] (3) The surety or institution shall notify the director if the bond or letter of credit is can-
 4 celed for any reason. The surety or institution continues to be liable under the bond or letter of
 5 credit until the director receives the notice required by this subsection, or until the cancellation
 6 date specified in the notice, whichever is later.

7 [(3)] (4) If the license of a manufactured structure dealer is not renewed or is voluntarily or
 8 involuntarily canceled, the surety on the bond and the issuer of the letter of credit are relieved from
 9 liability that accrues after the director cancels the license.

10 [(4)] (5) The manufactured structure dealer shall purchase a bond or letter of credit under this
 11 section annually on or before each anniversary of the issuance of the dealer's license.

12 [(5)] (6) A retail customer has a right of action against a manufactured structure dealer, against
 13 the surety on the dealer's bond and the issuer of a letter of credit if the retail customer suffers any
 14 loss or damage by reason of the manufactured structure dealer's fraud, fraudulent representations
 15 or violations of statutes relating to:

16 (a) Transfer of interests in manufactured structures;

17 (b) Moving manufactured structures;

18 (c) The alteration of manufactured structures; or

19 (d) The regulation of manufactured structure dealers and manufactured structure dealerships.

20 **SECTION 2.** ORS 446.746 is amended to read:

21 446.746. (1) A manufactured structure dealer improperly operates a manufactured structure
 22 dealership and is subject to the penalties under this section if the dealer commits any of the fol-
 23 lowing crimes:

24 (a) A manufactured structure dealer commits the crime of failure to obtain a supplemental li-
 25 cense if the dealer has a manufactured structure dealer license and opens any additional place of
 26 business using the same business name without first obtaining a supplemental license under ORS
 27 446.716.

28 (b) A manufactured structure dealer commits the crime of failure to obtain a corrected dealer
 29 license if the dealer moves a place of business or changes the business name without first obtaining
 30 a corrected dealer license under ORS 446.716.

31 (c) A manufactured structure dealer commits the crime of failure to maintain proper manufac-
 32 tured structure dealer records if the dealer does not keep records or books with all of the following
 33 information concerning a used manufactured structure the dealer handles:

34 (A) A record of the purchase, sale or exchange or of the dealer's receipt for purpose of sale.

35 (B) A description of the manufactured structure.

36 (C) The name and address of the seller, the purchaser and the alleged owner or other person
 37 from whom the manufactured structure was purchased or received or to whom it was sold or deliv-
 38 ered.

39 (D) A duly assigned ownership document or other document evidencing ownership or a bill of
 40 sale from the registered owner of the manufactured structure from the time of delivery to the dealer
 41 until the dealer disposes of the manufactured structure.

42 (d) A manufactured structure dealer commits the crime of failure to allow administrative in-
 43 spection if the dealer refuses to allow the Department of Consumer and Business Services to inspect
 44 the dealer's records and manufactured structures in the possession of the dealer at any time during
 45 normal business hours.

1 (e) A manufactured structure dealer commits the crime of failure to allow police inspection if
 2 the dealer refuses to allow a police officer to conduct an inspection of the dealer's records and
 3 manufactured structures in the possession of the dealer at any time during normal business hours.

4 (f) A manufactured structure dealer commits the crime of failure to exhibit the manufactured
 5 structure dealer license if the dealer fails to exhibit the license at the place of business of the dealer
 6 at all times while the license is in force. This paragraph does not apply to dealer activity at a
 7 temporary exhibition of manufactured structures.

8 (g) A manufactured structure dealer commits the crime of failure to satisfy an interest in a
 9 manufactured structure if, within 15 days after transfer of any interest in a manufactured structure
 10 to the dealer by a person other than another manufactured structure dealer, or within 15 days after
 11 receiving the ownership document for a manufactured structure obtained from another manufactured
 12 structure dealer, the dealer fails to satisfy:

13 (A) The interest of any person from whom the dealer purchased or obtained the manufactured
 14 structure;

15 (B) The interest of any person from whom the person described in subparagraph (A) of this
 16 paragraph leased the manufactured structure; and

17 (C) All security interests in the manufactured structure entered into prior to the time of trans-
 18 fer.

19 (h) Except as provided in subsection (2) of this section, a manufactured structure dealer commits
 20 the crime of failure to report an interest transfer for a manufactured structure if, 90 calendar days
 21 after a transfer of interest that is subject to ORS 446.736, the dealer has failed to submit:

22 (A) An application to the Department of Consumer and Business Services for an ownership
 23 document; or

24 (B) Sufficient information to a lender to allow the lender to make an application to the depart-
 25 ment for an ownership document.

26 (i) A person commits the crime of acting as a manufactured structure dealer while under sus-
 27 pension, revocation or cancellation if the person conducts business as a manufactured structure
 28 dealer in this state and the person's manufactured structure dealer license is revoked, canceled or
 29 suspended, regardless of whether the person is licensed as a manufactured structure dealer in an-
 30 other jurisdiction.

31 (j) A manufactured structure dealer commits the crime of failure to maintain bond or letter of
 32 credit coverage if the dealer permits a bond or letter of credit to lapse during the period that the
 33 bond or letter of credit is required under ORS 446.691, 446.696, [or] 446.701 **or 446.706** or if the
 34 dealer fails to purchase a bond or letter of credit that complies with ORS 446.726.

35 (2) A dealer is not considered to have committed the crime described in subsection (1)(h) of this
 36 section if the dealer demonstrates that:

37 (a) The dealer has made a good faith effort to comply; and

38 (b) The dealer's failure to make an application or provide information is due to circumstances
 39 beyond the dealer's control.

40 (3) The crimes described in this section are subject to the following penalties:

41 (a) The crime described in subsection (1)(a) of this section, failure to obtain a supplemental li-
 42 cense, is a Class A misdemeanor.

43 (b) The crime described in subsection (1)(b) of this section, failure to obtain a corrected dealer
 44 license, is a Class A misdemeanor.

45 (c) The crime described in subsection (1)(c) of this section, failure to maintain proper manufac-

1 tured structure dealer records, is a Class A misdemeanor.

2 (d) The crime described in subsection (1)(d) of this section, failure to allow administrative in-
3 spection, is a Class A misdemeanor.

4 (e) The crime described in subsection (1)(e) of this section, failure to allow police inspection, is
5 a Class A misdemeanor.

6 (f) The crime described in subsection (1)(f) of this section, failure to exhibit the manufactured
7 structure dealer license, is a Class A misdemeanor.

8 (g) The crime described in subsection (1)(g) of this section, failure to satisfy an interest in a
9 manufactured structure, is a Class A misdemeanor.

10 (h) The crime described in subsection (1)(h) of this section, failure to report an interest transfer
11 for a manufactured structure, is a Class A misdemeanor.

12 (i) The crime described in subsection (1)(i) of this section, acting as a manufactured structure
13 dealer while under suspension, revocation or cancellation, is a Class A misdemeanor.

14 (j) The crime described in subsection (1)(j) of this section, failure to maintain bond or letter of
15 credit coverage, is a Class A misdemeanor.

16 **SECTION 3. The amendments to ORS 446.726 and 446.746 by sections 1 and 2 of this 2015**
17 **Act apply to the issuance or renewal of a license under ORS 446.661 to 446.756 on or after the**
18 **effective date of this 2015 Act.**

19 _____