

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 249
90TH GENERAL ASSEMBLY

Reported from the Committee on Commerce and Environment, February 25, 1999, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 249, adopted March 10, 1999.

Taken up for Perfection March 10, 1999. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

S0857.04P

AN ACT

To amend chapter 324, RSMo, by adding thereto twenty-one new sections relating to setup contractors for the manufactured housing industry, with penalty provisions and an expiration date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 324, RSMo, is amended by adding thereto twenty-one new sections, to be known as sections 324.670, 324.673, 324.676, 324.679, 324.682, 324.685, 324.688, 324.691, 324.694, 324.697, 324.700, 324.703, 324.706, 324.709, 324.712, 324.715, 324.718, 324.721, 324.724, 324.727 and 324.730, to read as follows:

324.670. The following words, terms and phrases, as used in sections 324.670 to 324.727 shall have the following meanings:

(1) "Applicant", any individual who seeks to become licensed as a setup contractor or independent setup contractor;

(2) "Board", the Missouri Manufactured Housing Industry Board established in section 324.673;

(3) "Contractor", an independent setup contractor and setup contractor as defined by this section;

(4) "Director", the director of the division of professional registration;

(5) "Division", the division of professional registration in the department of

economic development;

(6) "Independent setup contractor", a person who engages in the business of performing setup operations and is not an agent of a dealer or manufacturer as defined in this chapter;

(7) "Person", any individual, natural person, firm, partnership, association, corporation, legal representative or other recognized legal entity;

(8) "Setup" or "installation", as defined in subdivision (14) of section 700.010;

(9) "Setup contractor", a person who engages in the business of performing setup operations in Missouri.

324.673. 1. There is hereby created within the division of professional registration, the "Missouri Manufactured Housing Industry Board". The board shall be composed of seven members as follows:

- (1) A manufactured home manufacturer;**
- (2) A manufactured home dealer;**
- (3) A manufactured home community owner;**
- (4) A manufactured home supplier;**
- (5) A manufactured home setup contractor; and**
- (6) Two representatives of the general public.**

2. All members of the board shall be citizens of the United States, at least eighteen years of age and residents and registered voters of the state of Missouri for at least one year. The governor shall appoint the members of the board for terms of three years, except as provided in subsections 3 and 4.

3. No member of the board shall serve more than two consecutive three-year terms. A vacancy in the office of any member shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

4. The initial appointments to the board shall be two members for terms of one year, two members for terms of two years and three members for terms of three years.

5. The public members of the board shall be registered voters and shall not be and never have been members of any profession regulated by the provisions of sections 324.670 to 324.727, or the spouse of any such person; and persons who do not have and never have had a financial interest in either the providing of the professional services regulated by the provisions of sections 324.670 to 324.727, or an activity or organization directly related to the profession regulated pursuant to sections 324.670 to 324.727. At least one public member must have resided or be currently residing in a manufactured home.

6. Any member of the board may be removed from the board by the governor for neglect of duty required by law, for incompetency or for unethical or dishonest conduct. Upon the death, resignation, disqualification or removal of any member of the

board, the governor shall appoint a successor to fill the vacancy for the remainder of the unexpired term.

324.676. 1. The board shall elect annually a chairperson and a vice chairperson from their membership, each of whom shall hold office for one year and until a successor is elected and qualified.

2. The board shall adopt, implement, rescind, amend and administer such rules and regulations as may be necessary and convenient for carrying into effect the provisions of sections 324.670 to 324.727 and may promulgate necessary rules compatible with the provisions of sections 324.670 to 324.727, including, but not limited to, rules relating to professional conduct, continuing education requirements for renewal of licenses, approval or sanction of continuing education programs, the amount of continuing education hours required and to the establishment of ethical standards of practice for persons holding a license of permit to practice manufactured home setup in this state.

3. The board shall convene at the request of the director or as the board shall determine. The board shall hold regular meetings at least once per calendar quarter.

4. Each member of the board shall receive as compensation, an amount set by the division, for each day devoted to the affairs of the board and may be reimbursed for actual and necessary expenses incurred in the performance of the member's official duties.

324.679. The division and the board shall provide all necessary personnel to carry out the provisions of sections 324.670 to 324.727. The division and the board shall:

(1) Establish, by rule, application and licensure fees and shall collect such fees;

(2) Deposit all fees collected pursuant to section 324.691, by transmitting such funds to the department of revenue for deposit to the state treasury to the credit of the manufactured housing licensing fund as provided in section 324.691;

(3) Process applications and notify licensees when the licensee's license is to expire; and

(4) Establish, by rule, the amount the board shall receive as a per diem for each day devoted to the member's official duties on the board and reimburse any actual and necessary expenses a board member incurs in the performance of the member's official duties.

324.682. An applicant applying for a license as a contractor shall file a written application provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) An applicant shall be of good moral character;

(2) An applicant shall present evidence satisfactory to the board and the public service commission of having successfully completed the academic requirements of an

education program in manufactured housing setup as recognized by the board;

(3) The applicant shall submit to the board and the public service commission evidence of having successfully completed a period of supervised field work experience. Such period of time shall be established by the board;

(4) An applicant for licensure as a contractor shall pass an examination as provided in sections 324.670 to 324.727;

(5) An applicant for licensure as a contractor must be at least eighteen years of age;

(6) An applicant for licensure as an independent setup contractor will be required to obtain or show proof of a certificate of insurance for workers' compensation coverage;

(7) An applicant for licensure as a contractor must continue to carry general liability insurance in an amount determined by department rule, in a minimum amount of one hundred thousand dollars and verify such upon application for licensure;

(8) An applicant for licensure as a contractor must complete a minimum eight hour training course approved by the board and shall pass a board-approved examination designed to test the skills necessary to properly perform as a contractor and to ascertain that the applicant has adequate knowledge of federal, state and local laws applicable to manufactured home contracting; and

(9) The board shall establish what constitutes a passing score for examinations.

324.685. 1. A direct agent of a licensed contractor working under the supervision of the licensee and within the job scope of the licensee is not required to be licensed as a contractor. The licensed contractor is responsible for supervising all such agents and for the proper and competent performance of all employees working under his or her supervision.

2. In the case of a corporation, partnership or similar legal entity, at least one supervising agent shall be required to be licensed as a contractor and shall follow the provisions as stated in subsection 1 of this section.

3. Registered manufactured home dealers and registered manufactured home manufacturers, as defined in section 700.010, that do not subcontract with a licensed contractor and that perform their own setup, either themselves or through direct agents/employees, shall have at least one agent/employee who has completed the requirements as provided in sections 324.670 to 324.727 and shall follow the provisions as stated in subsection 1 of this section.

324.688. The board may waive the examination, education or experience requirements and grant a license upon payment of fees to any applicant who presents proof of current licensure, registration or certification as a contractor in another state, the District of Columbia or territory of the United States which requires standards for

licensure, registration or certification considered by the board to be equivalent to the requirements for licensure in sections 324.670 to 324.727. The applicant shall not have any violations, suspensions or revocation of such license, registration or certification. Within the limits of this section, the board may negotiate reciprocal contracts with licensing boards of other states for the admission of licensed practitioners from Missouri in other states.

324.691. 1. All fees authorized pursuant to sections 324.670 to 324.727 shall be collected by the director of professional registration and shall be transmitted to the department of revenue for the deposit in the state treasury to the credit of the "Missouri Housing Licensing Fund" which is hereby created. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in the manufactured housing licensing fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of appropriation from the fund for the preceding fiscal year.

2. The board shall establish, by rule, fees to be charged for applications, examination, licensure, licensure renewal, limited permits and inactive status. The fees shall be set at an amount which shall not substantially exceed the cost of administering sections 324.670 to 324.727, except that the fees shall be set at an amount that all funds advanced from general revenue shall be reimbursed to general revenue before June 20, 2006. Until such time that funds in the manufactured housing licensing fund are sufficient to pay the expenses of administering sections 324.670 to 324.727, funds from general revenue may be used.

324.694. 1. The board may issue a limited permit, upon the payment of a fee, to a person who has completed the experience requirements of subdivision (3) of section 324.682 and who has not taken the examination. The permit shall be effective for a period of time not to exceed the time when the results of the next examination are announced. The limited permit shall allow the person to practice manufactured home setup under the supervision of a person currently licensed pursuant to sections 324.670 to 324.727. A permit issued pursuant to this section shall expire when the person is issued a license pursuant to section 324.682. The board may renew a limited permit issued pursuant to this section one time.

2. Notwithstanding the provisions of section 324.682, any person who submits evidence that he or she has been engaged in the business of manufactured home contracting on August 28, 1999, shall be exempt until August 29, 2000, from the requirements for completing training and for passing an examination in order to be licensed by the board as a manufactured home setup contractor. Such person shall be licensed upon application, provided he or she has complied with all other requirements of section 324.682, except the training and examination requirements. No person shall

be licensed or remain licensed as a manufactured home setup contractor after August 28, 2000, who has not taken and passed the board approved manufactured home contractor's examination unless such person is exempted from taking such examination pursuant to section 324.688.

324.697. 1. A license issued pursuant to sections 324.670 to 324.727 shall be renewed biennially, except as provided in section 324.694. The board may establish additional requirements for license renewal which provide evidence of continued competence. The board, by rule, may establish requirements for renewal of licensure and conditions and fees for the reissuing of licenses which have lapsed, expired or have been suspended or revoked; except that no such late renewal of a license may be granted more than five years after its expiration. The board shall reissue a license to any licensee who, before the expiration date of the license and within a period of time and pursuant to procedures established by the board, submits the required renewal application and fee.

2. Upon request, the board may grant inactive status to a licensee who meets the requirements for licensure pursuant to sections 324.670 to 324.727, if the person:

- (1) Does not practice as a contractor;**
- (2) Does not hold himself or herself out as a contractor;**
- (3) Maintains any continuing competency requirements established by the board; and**
- (4) Remits any fee that may be required by the board.**

3. The board shall deny renewal of a license if the person does not meet the requirements for renewal.

324.700. 1. The board may refuse to issue or renew, suspend or revoke a license or permit, or place a license or permit holder on probation or otherwise reprimand a licensee or permit holder, when the licensee, permit holder or applicant has been guilty of unprofessional conduct which has endangered, or is likely to endanger, the health, welfare or safety of any person, as provided in sections 324.670 to 324.727 or by any rule or regulation promulgated by the board.

2. If the board refuses to issue or renew a license or permit, the board shall notify the person in writing of the reasons for such refusal and shall advise the person of the person's right to file a complaint with the administrative hearing commission as provided in chapter 621, RSMo.

3. Any complaint received by the board concerning a person who is the holder of a license or permit issued pursuant to sections 324.670 to 324.727 or any complaint regarding any professional practice regulated by sections 324.670 to 324.727 shall be recorded as received and the date received. The board:

- (1) Shall investigate all complaints concerning alleged violations of the**

provisions of sections 324.670 to 324.727 or if there are grounds for the suspension, revocation or refusal to issue any license or permit;

(2) May issue subpoena duces tecum in order to cause any licensee, permit holder or any other person to produce records or to appear as a witness pursuant to any investigation or proceeding conducted pursuant to the provisions of sections 324.670 to 324.727;

(3) May, in lieu of or in addition to any remedy provided in this section, file a petition in the name of the state asking a court to issue a restraining order, an injunction or a writ of mandamus against any person who is, or had been violating any of the provisions of sections 324.670 to 324.727 or any lawful rule, order or subpoena of the public service commission or the board;

(4) May, if the evidence supports such action, cause a complaint to be filed with the administrative hearing commission as provided in chapter 621, RSMo, against any holder of any license or permit issued pursuant to sections 324.670 to 324.727.

4. The public service commission shall forward a copy of all inspections of the setup of a manufactured home to the board for review within thirty days of the performance of the inspection.

324.703. Notwithstanding any provision of law to the contrary, the board may discipline or sanction any holder of a license or permit or unlicensed person pursuant to sections 324.670 to 324.727 for any one or any combination of violations pursuant to sections 324.706 to 324.724.

324.706. 1. No person shall:

(1) Falsely hold himself or herself or a business organization out as a licensed contractor;

(2) Falsely impersonate a licensed contractor;

(3) Present as his or her own the contractor's license of another;

(4) Knowingly give false or forged evidence to the board;

(5) Use or attempt to use a contractor's license which has been suspended or revoked; or

(6) Engage in the business or act in the capacity of a licensed contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly licensed.

2. Any person who violates any provision of this section is guilty of a class B misdemeanor.

324.709. No licensed person nor licensed applicant shall:

(1) Obtain a contractor's license by fraud or misrepresentation;

(2) Be convicted or found guilty of, or enter a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which directly relates to the practice of

contractor or the ability to practice;

(3) Violate any lawful order of the board;

(4) Commit fraud or deceit in the practice of contracting;

(5) Commit incompetence or misconduct in the practice of contracting;

(6) Commit gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property;

(7) Commit violations of the setup standards for manufactured homes contained in sections 700.010 to 700.500.

324.712. The board may discipline any person licensed pursuant to sections 324.670 to 324.727 or any person applying for a license pursuant to sections 324.670 to 324.727 who violates any provision of section 324.709 as follows:

(1) Revoke the person's license;

(2) Suspend the person's license;

(3) Require the person to take and pass, or retake and pass, the board-approved examination;

(4) Place the person on probation;

(5) Send a notice of noncompliance; or

(6) Refuse to issue a license.

324.715. The regulation of contractors is preempted and no person may perform setup unless licensed pursuant to sections 324.670 to 324.727, regardless of whether that person holds a local setup license.

324.718. No county, municipality, or other unit of local government may require additional manufactured home setup licensing of a person licensed pursuant to sections 324.670 to 324.727 who performs setup of a manufactured home.

324.721. All setup contractors shall purchase setup decals from the department of professional registration for a fee established by the board. A setup decal shall be affixed to the manufactured home upon setup. This decal shall denote the date of setup, the name of the setup contractor, and the number of the setup contractor's license or the dealer or manufacturer license number. Such decal shall be positioned and permanently affixed next to the manufactured home data plate and such setup contractor shall provide notification that such setup was performed in accordance with appropriate standards.

324.724. The division shall hire all necessary personnel and may hire on a contract basis any attorney to carry out the provisions of sections 324.670 to 324.721. The division shall exercise all staffing, budgeting, purchasing, reporting and other related management functions.

324.727. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 324.670 to 324.727

shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to the effective date of this section is of no force and effect; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to the effective date of this section if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

324.730. The provisions of sections 324.670 to 324.727 shall expire on August 28, 2004.

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