

Senate Bill No. 1450

Passed the Senate August 8, 1996

Secretary of the Senate

Passed the Assembly July 11, 1996

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1996, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

An act to amend Sections 18035, 18054, 18054.7, 18055, 18060, and 18061.5 of, and to repeal Sections 18013.5 and 18063.8 of, the Health and Safety Code, relating to mobilehomes and manufactured housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1450, Kelley. Mobilehomes and manufactured housing: sales: escrow accounts and transporters.

Existing law with respect to transactions by or through a dealer for the sale or lease, with an option to buy, a new or used manufactured home or mobilehome requires that an escrow account be established and requires that prescribed escrow instructions be included for every transaction. Existing law requires that, among other things, the escrow instructions specify, with respect to an installed manufactured home or mobilehome, that all funds in the escrow account be disbursed either at the time the buyer receives delivery of the home and the home passes inspection pursuant to specified provisions of law applicable to the buyer or, if the inspection provisions are not applicable to the buyer, at the time the buyer receives delivery of the home and all agreed upon delivery requirements have been met.

This bill would add to these provisions that, if mutually agreed upon between buyer and dealer, the escrow instructions may specify that funds be disbursed to a government agency for the payment of fees and permits required as a precondition for an installation acceptance or certificate of occupancy, and the information that may be acceptable to the escrow agent.

Under existing law, the Department of Housing and Community Development regulates sales, distribution, and the transportation under permit of mobilehomes, manufactured homes, and commercial coaches, including the issuance of occupational licenses and the issuance of transportation decals and other visual displays.



This bill would delete the provisions relating solely to the transportation of, including the issuance of transportation decals for, and the definition of “transporter” in connection with, mobilehomes, manufactured homes, and commercial coaches.

The people of the State of California do enact as follows:

SECTION 1. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) (1) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer’s signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. Checks, money orders, or similar payments toward the purchase shall be made payable only to the escrow agent.

(2) The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within five working days of receipt, one of which shall be the day of receipt.

(3) For purposes of this section, “cash equivalent” means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery



to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrowholder.

(b) For every transaction by or through a dealer to sell or lease with the option to buy a new manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) (A) That, in the alternative, either of the following shall occur:

(i) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(ii) The inventory creditor shall consent in writing to other than full payment.

(B) For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome, as contemplated by Section 9107 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide:

(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

(2) That, in the alternative, either of the following shall occur:



(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current certificate of title shall be appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall do either of the following:

(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

(B) Advise the escrow agent in writing that the new buyer or the buyer's stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at or before the close of escrow.



(d) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part:

(1) The dealer shall present the buyer's offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form that reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon receipt of notification from the dealer that the seller has accepted the buyer's offer to purchase and receipt of mutually endorsed escrow instructions, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.



(ii) The creditor's release or transfer of the lien in the manufactured home or mobilehome contingent upon the satisfaction of those conditions.

(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

(i) A statement of the creditor's belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

(ii) The creditor's approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.

(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of title in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor's copy of the current registration card in an unexecuted form shall accompany the documents.

(5) If either of the following events occur, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of title or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

(A) The conditions required in order for the creditor to release or transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).



(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars (\$300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars (\$300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

(e) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the escrow instructions shall specify one of the following:

(1) Upon the buyer receiving delivery of an installed manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed. If mutually agreed upon between buyer and dealer, the escrow instructions may specify that funds be disbursed to a government agency for the payment of fees and permits required as a precondition for an installation acceptance or certificate of occupancy, and the information that may be acceptable to the escrow agent.

(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents,



all funds in the escrow account, other than escrow fees, shall be disbursed.

(f) In the event any dispute arises between the parties to the escrow and upon notification in writing to the escrow agent, unless otherwise specified in the escrow instructions, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate.

(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller has more than a 5 percent ownership interest.

(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

(j) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome that is subject to inspection pursuant to Section 18613, and for which it is stated, on the face of the document certifying or approving occupancy or installation, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.



(k) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(l) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

(m) Upon opening escrow on a used manufactured home or mobilehome which is subject to local property taxation, and subject to registration under this part, the escrow officer may forward to the tax collector of the county in which the used manufactured home or mobilehome is located, a written demand for a tax clearance certificate, if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the office of the Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed which has a final due date of at least 30 days beyond the date of issuance.

(2) If the tax collector on which the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts may be accepted



by the department in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the transfer of ownership may be completed.

(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

(n) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars (\$2,000). In addition, attorney's fees and court costs shall also be awarded a plaintiff who prevails in the action.

SEC. 2. Section 18013.5 of the Health and Safety Code is repealed.

SEC. 3. Section 18054 of the Health and Safety Code is amended to read:

18054. (a) The department, upon granting a license, shall issue to the applicant a license with a size and format established by the department containing at least the applicant's name and address, the general distinguishing number assigned to the applicant and expiration date. For salespersons, the license shall also state the name and address of the employing dealer. The department may issue other forms of identification to licensees.

(b) The department shall also furnish books and forms as it may determine necessary. All books, forms, and licenses shall remain the property of the department and may be taken up at any time for inspection.

(c) A licensee shall promptly obtain a replacement license when the original is either lost or mutilated, and, in the case of a salesperson, when changing his or her name, employment, or residence address.



(d) Whenever the department cancels, suspends, or revokes a license, the licensee or person in possession shall immediately return the license, documents, transportation decals, report of sales books, certificates, and other evidence of licensure to the department.

SEC. 4. Section 18054.7 of the Health and Safety Code is amended to read:

18054.7. (a) Every occupational license issued to a manufacturer, distributor, dealer, or salesperson shall expire on the last day of the 24th month following the date of issuance of the temporary permit, pursuant to Section 18052.

(b) Every occupational license renewed by a manufacturer, distributor, dealer, or salesperson shall be for a term of 24 months.

(c) Applications to renew an occupational license held by a manufacturer, distributor, dealer, or salesperson shall be received by the department or postmarked during the month of expiration. An expired occupational license may be reinstated upon application for reinstatement to the department within 60 days of expiration. The application for reinstatement shall be accompanied with the payment of all renewal fees and a reinstatement fee equal to 50 percent of the renewal fee.

(d) Holders of an expired occupational license shall discontinue all activities of a licensee until a new license or temporary permit is obtained from the department, except that an applicant for renewal may continue to operate with an expired occupational license, provided all other requirements of rules, regulations, and laws governing their activities are met, until the application for renewal is approved or denied.

SEC. 5. Section 18055 of the Health and Safety Code is amended to read:

18055. (a) The department may require that fees shall be paid to the department for the issuance or renewal of a license to do business as a licensee. The fees shall reimburse the department for costs incurred in administration and enforcement of this chapter. The department may refuse to renew a license if a licensee has



failed to pay any fees or penalties due the department pursuant to this part.

(b) Any person required to be licensed under this chapter who fails to make application for a license when required shall, in addition to the fees required pursuant to subdivision (a), pay a penalty of 50 percent of the license fee.

SEC. 6. Section 18060 of the Health and Safety Code is amended to read:

18060. With respect to business operations, it is unlawful to do any of the following:

(a) Make, or knowingly or negligently permit, any illegal use of any special permits, or report of sales books issued to or in favor of a licensee.

(b) Submit a check, draft, or money order to the department for any obligation or fee due the department which is thereafter dishonored or refused payment upon presentation.

(c) Fail to notify the department, within 10 days, of any change in the ownership or corporate structure of the licensee, or of the employment or termination of a mobilehome or commercial coach salesperson.

SEC. 7. Section 18061.5 of the Health and Safety Code is amended to read:

18061.5. It is unlawful to do any of the following:

(a) Willfully violate any law, or any rule or regulation adopted by the department, relating to manufactured homes, mobilehomes, or commercial coaches or the sale of manufactured homes, mobilehomes, or commercial coaches.

(b) Fail to comply within a reasonable time with any written order of the department or any law enforcement agency.

(c) Fail to meet the terms and conditions of a compromise agreement effected under the provisions of Section 18064.5.

(d) Cause or allow the existence of any of the conditions specified in Section 18050.5 as a cause for refusal to issue a license.



(e) Lend a license to any other person or knowingly permit the use thereof by another.

(f) Display or represent any license not issued to the person as being his or her license.

(g) Fail or refuse to surrender to the department, upon its lawful demand, any license or report of sales books, which is suspended, revoked, or canceled.

(h) Permit any unlawful use of a license or report of sales books, issued to a licensee.

(i) Photograph, photostat, duplicate, or in any way reproduce any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or display or possess any photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this part.

(j) Accept or encourage sales arranged or negotiated by unlicensed persons or salespersons while not employed by the dealer. For the purposes of this section, employment by a dealer shall mean employment reported to the department pursuant to Section 18060.

SEC. 8. Section 18063.8 of the Health and Safety Code is repealed.



Approved _____, 1996

Governor

