

CHAPTER 171
FORMERLY
SENATE BILL NO. 134

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO MANUFACTURED HOME INSTALLATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter V of Chapter 44, Title 24 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

Subchapter V. Disciplinary proceedings ~~and judicial review~~

§ 4441. Grounds for discipline

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 4443, if, after a hearing, the Board finds that the practitioner:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a manufactured home installer or a certificate as a manufactured home installation inspector; has impersonated another person holding a license or certificate, or allowed another person to use that manufactured home installer's license or manufactured home installation inspector's certificate, or aided or abetted a person not licensed as a manufactured home installer or certified as a manufactured home installation inspector to represent himself or herself as a manufactured home installer or manufactured home installation inspector.

(2) Has illegally, incompetently or negligently practiced manufactured home installation or manufactured home installation inspection.

(3) Has been convicted of a crime that is substantially related to the practice of manufactured home installation or manufactured home installation inspection. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof.

(4) Has excessively used or abused drugs either in the past 2 years or currently; excessive use or abuse of drugs shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed practitioner, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a manufactured home installer or manufactured home installation inspector.

(5) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(6) Has had that practitioner's manufactured home installer's license or manufactured home installation inspector's certificate suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a manufactured home installer or certified as a manufactured home installation inspector in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agencies in another jurisdiction, and to have waived all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(7) Has failed to notify the Board that the manufactured home installer's license or manufactured home installation inspector's certificate in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(8) Has failed to comply with a lawful Board Order.

(b) Subject to the provisions of subchapter IV of Chapter 101 of Title 29, no license or certificate shall be restricted, suspended, or revoked by the Board, and no practitioner's right to practice manufactured home installation or manufactured home installation inspection shall be limited by the Board until such practitioner has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29. Notice shall be accomplished by mail to the last address of record provided by the practitioner. It is the practitioner's responsibility to notify the Division of a change of address within 15 days of that change.

§ 4442. Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29 alleging violation of § 4441 of this chapter, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of the day that notice of the decision is mailed, in accordance with the Administrative Procedures Act, § 10142 of Title 29.

§ 4443. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 or more of the conditions or violations set forth in § 4441 of this title applies to a practitioner:

(1) Issue a letter of reprimand;

(2) Place the practitioner on probationary status and require the practitioner to:

a. Report regularly to the Board upon the matters which are the basis for the probation; and/or

b. Limit all practice and professional activities to those areas prescribed by the Board.

(3) Impose a monetary penalty as set forth in § 4445(c);

(4) Suspend any practitioner's license or certificate.

(5) Revoke or permanently revoke any practitioner's license or certificate.

(b) The Board may withdraw or reduce conditions of probation when it finds that deficiencies requiring such action have been remedied.

(c) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, it may, after a hearing on the matter, suspend or revoke the practitioner's license or certificate.

§ 4444. Temporary suspension pending hearing.

In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

§ 4445. Penalties.

(a) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29 that a person is engaged in the practice of manufactured home installation or manufactured home installation inspection regulated by this chapter without having lawfully obtained a license or certificate or that a person previously licensed or certified under this chapter is engaged in a practice regulated by this chapter notwithstanding that the person's license or certificate has been suspended or revoked, the Board may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Board may seek an injunctive order prohibiting such unlawful practice and/or seek the imposition of other civil penalties defined by this chapter.

(b) Upon notice and hearing pursuant to Chapter 101 of Title 29, the Board may fine any person who violates such cease and desist order not less than \$100 or more than \$1000. Each day a violation continues may be deemed a separate offense in the Board's discretion.

(c) Any person who violates any provisions of this chapter or any rules or regulations promulgated hereunder shall be liable for a civil penalty of not more than \$5,000 for the first offense; and not more than \$10,000 for the second and each subsequent offense, which penalty may be sued for, and recovered by, the Board. Nothing in this section shall be construed to prevent prosecution under, or be inconsistent with, Title 11 of the Delaware Code.

(d) In addition to the sanctions set forth in §§ 4445(a) and (b), a person, not currently licensed as a manufactured home installer or certified as a manufactured home installation inspector under this chapter, when guilty of performing manufactured home installation or manufactured home installation inspection, or using in connection with that person's name, or otherwise assuming or using any title or description conveying, or tending to convey, the impression that the person is qualified to perform manufactured home installation or manufactured home installation inspection, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than \$500 nor more than \$1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

~~§ 4441. Grounds and procedure for denial, nonrenewal or revocation of license.~~

~~(a) The Board may revoke, deny, or refuse to renew any license or certificate issued pursuant to this chapter if the licensee or certificate holder fails to meet the applicable provisions of this chapter or of the Board's regulations.~~

~~(b) The Board shall promulgate rules and regulations establishing the procedures for the denial, nonrenewal, or revocation of a manufactured home installer license or installation inspector certificate.~~

~~(c) No licensee, applicant, former licensee, or certificate holder shall have his or her license or certificate restricted, denied, nonrenewed, or revoked until such licensee, applicant, former licensee, or certificate holder has been provided notice of the Board's intended action and an opportunity to be heard on the matter in a public hearing.~~

~~(d) At a hearing of the Board pursuant to this section:~~

~~(1) The Board may consider evidence from any source relating to the competency or status of the applicant, licensee or former licensee;~~

~~(2) The Delaware Uniform Rules of Evidence shall be used as a reference to guide proceedings; and~~

~~(3) Parties may be represented by counsel, but such representation shall not be required by the Board, and any corporate party may represent itself through an officer, fiduciary, or duly authorized representative of the corporation.~~

~~(e) Following a hearing of the Board conducted pursuant to this section, the Board shall issue a written decision, within which it shall set forth its findings of fact and conclusions of law and shall include the reasons for such decision. The Board's decision shall also announce the status of the applicant, licensee, or former licensee. The Board's decision shall be issued and approved by the Board in a timely manner pursuant to the Administrative Procedures Act, Chapter 101 of Title 29. The Board's decision is final when approved by the Board.~~

~~(f) The Board's approved decision shall be mailed to the parties and released to the public within 24 hours following its approval by the Board.~~

~~(g) Any licensee, applicant, former licensee, or certificate holder who was a party to the hearing before the Board and who is aggrieved by the Board's decision may bring an appeal on the record to the Superior Court. An appeal pursuant to this subsection must be taken within 30 days of the Board's decision becoming final.~~

~~§ 4442. Complaints; complaint hearings.~~

~~(a) The Board may at any time consider complaints from any source as to the competency of any applicant, licensee, or board-certified inspector.~~

~~(b) If the Board receives a complaint, and wishes to take action that is adverse to the applicant, licensee, or inspector, the Board shall schedule a public hearing on the complaint pursuant to the Administrative Procedures Act, Chapter 101 of Title 29.~~

~~(c) At a complaint hearing:~~

~~(1) The Delaware Uniform Rules of Evidence shall be used as a reference to guide proceedings;~~

~~(2) Parties may be represented by counsel, but such representation shall not be required by the Board, and any corporate party may represent itself through an officer, fiduciary, or duly authorized representative of the corporation; and~~

~~(3) Evidence of compliance with the installation code, such as the issuance of a certificate of completion or occupancy following installation inspection, shall be prima facie evidence that an installer has correctly installed a manufactured home.~~

~~(d) Following a hearing of the Board conducted pursuant to this section, the Board shall issue a written decision, within which it shall set forth its findings of fact and conclusions of law and shall include the reasons for such decision. If the Board finds that an installation was performed or completed in a manner not in compliance with this chapter, the Board's decision shall also contain a section to address the deficiency or deficiencies in the installation and the Board may direct a licensee to take such corrective actions as it deems necessary to bring the installation into compliance. The Board's decision shall be issued and approved by the Board in a timely manner pursuant to the Administrative Procedures Act, Chapter 101 of Title 29. The Board's decision is final when approved by the Board.~~

~~(e) The Board's approved decision shall be mailed to the parties and released to the public within 24 hours following its approval by the Board.~~

~~(f) Any complainant, licensee, applicant, former licensee, or certificate holder who was a party to the hearing before the Board and who is aggrieved by the Board's decision may bring an appeal on the record to the Superior Court. An appeal pursuant to this subsection must be taken within 30 days of the Board's decision becoming final.~~

~~§ 4443. Unauthorized practitioners.~~

~~(a) Any person found by the Board, after an investigation into the matter, to be an unauthorized practitioner shall be ordered by the Board to cease and desist all activities the person is undertaking in this State as an unauthorized practitioner. The Board's cease and desist order shall be issued and approved by the Board in a timely manner pursuant to the Administrative Procedures Act, Chapter 101 of Title 29. The Board's cease and desist order is final when approved by the Board. The Board's approved order shall be mailed to the unauthorized practitioner and released to the public within 24 hours following its approval by the Board.~~

~~(b) If it comes to the Board's attention that an unauthorized practitioner has failed to obey a cease and desist order issued pursuant to this section, the Board may pursue a civil action in the Justice of the Peace Court to enforce the order and seeking civil penalties as follows:~~

~~(1) For a first offense, the unauthorized practitioner shall be order to pay to the Board a penalty in the amount of \$500 for the installation or inspection undertaken in violation of this chapter and shall be ordered to pay all costs associated with the Board's action.~~

~~(2) For second and subsequent offenses, the unauthorized practitioner shall be ordered to pay to the Board a penalty in the amount of \$1,000, plus an additional \$1,000 for each installation or inspection undertaken in violation of this chapter, and shall be ordered to pay all costs associated with the Board's action.~~

~~§ 4444. Applicability of other laws.~~

~~Nothing in this chapter shall prevent or hinder any prosecution under the applicable provisions of Title 11. Where it is alleged that such violation of this chapter has resulted in serious injury to or the death of any individual, the offender shall be charged and tried under the applicable provisions of Title 11.~~

Approved August 06, 2013