

Regular Session, 2012

ACT No. 112

HOUSE BILL NO. 1029 (Substitute for House Bill No. 798 by Representative Ponti)

BY REPRESENTATIVE PONTI

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AN ACT

To amend and reenact R.S. 51:911.23, to enact Part XIV-A of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:912.1 through 912.10, and to repeal R.S. 51:911.25, relative to manufactured housing; to enact the New Manufactured and Modular Home Warranty Act; to provide for the purpose of the act; to provide for definitions; to provide for warranties for new manufactured and modular housing; to provide for exclusions to the warranties; to require an owner to provide notice of defects; to require notice of the warranties to be given to the owner; to provide for a peremption period for warranties; to allow the use of insurance to meet the warranty requirements; to provide for transfer of warranties and insurance; to establish a cause of action for actual damages due to violations; to authorize attorney fees and court costs; to provide for arbitration; to provide for exclusiveness; to repeal existing warranty provisions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 51:911.23 is hereby amended and reenacted and Part XIV-A of Chapter 2 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:912.1 through 912.10, is hereby enacted to read as follows:

§911.23. Establishment of Uniform Standards Code; ~~code preemption~~

~~A.~~ All new manufactured or modular homes, as defined in R.S. 51:911.22, which are sold or offered for sale in this state shall be in compliance with the Code and the requirements of this Part.

1 et seq., as amended, and federal regulations promulgated pursuant thereto, along with
 2 any construction or installation-related standards adopted by the Louisiana
 3 Manufactured Housing Commission, together with any additional performance
 4 standards, if any, which the builder may undertake to be in compliance.

5 (b) "Building standards" for modular housing means the International
 6 Residential Code as adopted by the Louisiana State Uniform Construction Code
 7 Council.

8 (3) "Commission" means the Louisiana Manufactured Housing Commission.

9 (4) "Home" means a manufactured home or modular home as defined in this
 10 Section.

11 (5) "Initial purchaser" means any person for whom a home is built or the first
 12 person to whom a home is sold upon completion of construction.

13 (6) "Major structural defect" means any actual physical damage to the
 14 following designated load-bearing portions of a home caused by failure of the
 15 load-bearing portions which affects their load-bearing functions to the extent the
 16 home becomes unsafe, unsanitary, or is otherwise unlivable:

17 (a) Foundation systems and footings.

18 (b) Beams.

19 (c) Girders.

20 (d) Lintels.

21 (e) Columns.

22 (f) Walls and partitions.

23 (g) Floor systems.

24 (h) Roof framing systems.

25 (7) "Manufactured home" or "manufactured housing" means a factory-built,
 26 residential dwelling unit constructed to standards and codes, as promulgated by the
 27 United States Department of Housing and Urban Development, under the National
 28 Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.
 29 5401 et seq., as amended. Further, the terms "manufactured home" and
 30 "manufactured housing" may be used interchangeably and apply to structures bearing

1 the permanently affixed seal of the United States Department of Housing and Urban
2 Development or to factory-built, residential dwellings that are mounted on a chassis.

3 (8) "Modular home" means a factory-built, residential dwelling unit built to
4 the International Residential Code as adopted by the Louisiana State Uniform
5 Construction Code Council.

6 (9) "Owner" means the initial purchaser of a home and any of his successors
7 in title, heirs, invitees, or assigns to a home during the time the warranties provided
8 under this Part are in effect.

9 (10) "Warranty commencement date" means the date that legal title to a
10 home is conveyed to its initial purchaser or the date the home is first occupied,
11 whichever occurs first.

12 §912.4. Warranties; exclusions

13 A. Subject to the exclusions provided in Subsection B of this Section, every
14 builder warrants the following to the owner:

15 (1) One year following the warranty commencement date, the home will be
16 free from any defect due to noncompliance with the building standards or due to
17 other defects in materials or workmanship not regulated by building standards.

18 (2) Two years following the warranty commencement date, the plumbing,
19 electrical, heating, cooling, and ventilating systems exclusive of any appliance,
20 fixture, and equipment will be free from any defect due to noncompliance with the
21 building standards or due to other defects in materials or workmanship not regulated
22 by building standards.

23 (3) Five years following the warranty commencement date, the home will
24 be free from major structural defects due to noncompliance with the building
25 standards or due to other defects in materials or workmanship not regulated by
26 building standards.

27 B. Unless the parties otherwise agree in writing, the builder's warranty shall
28 exclude the following items:

1 (1) Fences, landscaping, including but not limited to sodding, seeding,
 2 shrubs, existing and new trees, and plantings, as well as off-site improvements, all
 3 driveways and walkways, or any other improvement not a part of the home itself.

4 (2) After the first year, the concrete floor of a basement and the concrete
 5 floor of an attached or unattached garage that is built separate from a foundation wall
 6 or other structural element of the home.

7 (3) Damage to real property which is not part of the home covered by the
 8 warranty and which is not included in the purchase price of the home.

9 (4) Any damage to the extent it is caused or made worse by any of the
 10 following:

11 (a) Negligence, improper maintenance, neglect, or improper operation by
 12 anyone other than the builder or any employee, agent, or subcontractor of the builder.

13 (b) Failure by anyone other than the builder or any employee, agent, or
 14 subcontractor of the builder to comply with the warranty requirements of
 15 manufacturers of appliances, equipment, or fixtures.

16 (c) Failure by the owner to give written notice by registered or certified mail
 17 to the commission of any defect within the time set forth in this Section; however,
 18 the provisions of this Subparagraph shall not be construed to change either the
 19 warranty periods enumerated in Subsection A of this Section or the notice
 20 requirements provided by this Section.

21 (d) Any change of the grading of the ground by anyone other than the
 22 builder, or any employee, agent, or subcontractor of the builder.

23 (e) Any change, alteration, or addition made to the home by anyone after the
 24 initial occupancy by the owner, except any change, alteration, or addition performed
 25 by the builder or any employee, agent, or subcontractor of the builder.

26 (f) Dampness, condensation, or other damage due to the failure of the owner
 27 to maintain adequate ventilation or drainage.

28 (5) Any loss or damage which the owner has not taken timely action to
 29 minimize.

1 (6) Any defect in, or any defect caused by, materials or work supplied by
2 anyone other than the builder or any employee, agent, or subcontractor of the builder.

3 (7) Normal wear and tear or normal deterioration.

4 (8) Loss or damage which does not constitute a defect in the construction of
5 the home by the builder or any employee, agent, or subcontractor of the builder.

6 (9) Loss or damage resulting from war, accident, riot and civil commotion,
7 water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm,
8 hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, and changes
9 in the level of the underground water table which are not reasonably foreseeable.

10 (10) Any damage caused by soil movement which is covered by other
11 insurance.

12 (11) Insect damage.

13 (12) Any loss or damage which arises while the home is being used primarily
14 for a nonresidential purpose.

15 (13) Any condition which does not result in actual physical damage to the
16 home.

17 (14) Bodily injury or damage to personal property.

18 (15) Any cost of shelter, transportation, food, moving, storage, or other
19 incidental expense related to relocation during repair.

20 (16) Any defect not reported in writing by registered or certified mail to the
21 commission or insurance company, as appropriate, prior to the expiration of the
22 period specified in Subsection A of this Section for such defect plus thirty days.

23 (17) Consequential damages.

24 (18) Any loss or damage to a home caused by soil conditions or soil
25 movement if the home is constructed on land owned by the initial purchaser and the
26 builder obtains a written waiver from the initial purchaser for any loss or damage
27 caused by soil conditions or soil movement.

28 (19) Mold and mold damage.

29 C. The provisions of Subsection A of this Section establish minimum
30 required warranties and shall not be waived by the owner or reduced by the builder

1 provided the home is a single- or multiple-family dwelling to be occupied by an
2 owner as his home.

3 §912.5. Required notice

4 A. Before undertaking any repair himself or instituting any action for breach
5 of warranty, the owner shall give the commission written notice, by registered or
6 certified mail, within one year after knowledge of the defect, advising the
7 commission of all defects. The commission shall then have the home inspected and
8 a determination made on all defects listed by the owner. Thereafter, the commission
9 shall give the appropriate builder a reasonable opportunity to comply with the
10 provisions of this Part. Once the repairs are made, the commission shall have the
11 home reinspected to determine if the repairs have been made in compliance with the
12 building standards.

13 B. The dealer or developer licensee shall give the owner written notice of the
14 requirements of this Part at the time of the closing between the dealer or developer
15 and the owner, or if there is no such closing, at the time of the execution of the
16 purchase agreement between the dealer or developer and the owner. The
17 commission shall adopt and promulgate rules and regulations in accordance with the
18 Administrative Procedure Act to implement the provisions of this Subsection.

19 §912.6. Peremption

20 Any action to enforce any warranty provided in this Part shall be subject to
21 a peremptive period of thirty days after the expiration of the appropriate time period
22 provided in R.S. 51:912.4.

23 §912.7. Insurance

24 All or part of the builder's obligation under any warranty required in this Part
25 may be insured by the builder for the benefit of the purchaser through an insurance
26 company authorized to transact business in this state.

27 §912.8. Transfer of warranty and insurance

28 Any warranty imposed pursuant to this Part and any insurance benefit shall
29 automatically transfer without charge to a subsequent owner who acquires title to the

1 home. Any transfer of the home shall not extend the duration of any warranty or
2 insurance coverage.

3 §912.9. Violations; limitations

4 A. If a builder violates this Part by failing to perform as required by the
5 warranties provided in this Part, any affected owner shall have a cause of action
6 against the builder for actual damages, including attorney fees and court costs,
7 arising out of the violation. The damages with respect to a single defect shall not
8 exceed the reasonable cost of repair or replacement necessary to cure the defect, and
9 damages with respect to all defects in the home shall not exceed the original
10 purchase price of the home.

11 B. The parties may provide for the arbitration of any claim in dispute. Any
12 arbitration shall comply with and may be binding only to the extent provided in R.S.
13 9:4201 et seq.

14 §912.10. Exclusiveness

15 This Part provides the exclusive remedies, warranties, and preemptive
16 periods as between the builders and owner relative to the construction of homes as
17 defined in this Part, and no other provisions of law relative to warranties and
18 redhibitory vices and defects shall apply. Nothing herein shall be construed as
19 affecting or limiting any warranty of title to land or improvements.

20 Section 2. R.S. 51:911.25 is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____