

SENATE No. 698

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the titling of certain manufactured homes.

PETITION OF:

NAME:

James B. Eldridge

Marjorie C. Decker

DISTRICT/ADDRESS:

Middlesex and Worcester

25th Middlesex

SENATE No. 698

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 698) of James B. Eldridge and Marjorie C. Decker for legislation relative to the titling of certain manufactured homes. Housing.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to the titling of certain manufactured homes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 188 the
2 following chapter:-

3 CHAPTER 188A

4 Section 1. Definitions.

5 (1) "Buyer" means a person that buys or contracts to buy a manufactured home.

6 (2) "Certificate of location" means a record in recordable form which includes:

7 (A) the homeowner's name;

8 (B) the unique identifier of the manufactured home that is the subject of the certificate;

9 (C) a legally sufficient description of the land on which the home is located or on which
10 the homeowner intends to locate it;

- 11 (D) the name of the record owner of the land;
- 12 (E) the homeowner's representations that:
- 13 (i) the homeowner owns the home;
- 14 (ii) the home is or will be located on the land described in the certificate; and
- 15 (iii) the homeowner has the legal right to locate the home on the land described in the
16 certificate;
- 17 (F) the homeowner's signature;
- 18 (G) the date the homeowner signed the certificate;
- 19 (H) the name and mailing address of the person to which the [recorder] is to return the
20 recorded certificate; and
- 21 (I) as an attachment to the certificate:
- 22 (i) the certificate of origin for the home, together with an official search report, issued
23 not more than 15 days before the date of the certificate of location by the secretary of the
24 commonwealth that lists each financing statement which lists the homeowner as a debtor and a
25 copy of each financing statement; or
- 26 (ii) a certified copy of the most recent certificate of location for the home and of the
27 deed, if any, by which the homeowner acquired title to the home; or a
- 28 (iii) the certificate of title for the home.

29 (3) "Certificate of origin" means a record created by a manufacturer or importer as the
30 manufacturer's or importer's proof of identity of a manufactured home.

31 (4) "Certificate of relocation" means a record in recordable form which includes:

32 (A) the name of the person causing the manufactured home that is the subject of the
33 certificate to be relocated;

34 (B) if the person causing the home to be relocated does not own the home, the
35 homeowner's name, if known;

36 (C) the unique identifier of the manufactured home, if known;

37 (D) a legally sufficient description of the land from which the home has been or will be
38 relocated;

39 (E) the name of the record owner of the land;

40 (F) the recording information for the most recent deed or certificate of location for the
41 home;

42 (G) a statement that the home has been or will be relocated;

43 (H) the date that the home was or will be relocated;

44 (I) the signature of the person causing the home to be relocated;

45 (J) the date the person signed the certificate; and

46 (K) the name and mailing address of the person to which the [recorder] is to return the
47 recorded certificate.

48 (5) “Electronic” means relating to technology having electrical, digital, magnetic,
49 wireless, optical, electromagnetic, or similar capabilities.

50 (6) “Land controlled by the homeowner” means land on which the owner of a
51 manufactured home has the legal right to locate the home.

52 (7) “Located”, with reference to a manufactured home, means placing the home at a site
53 at which the home has or previously had electricity supplied from any source and having the
54 towing hitch, wheels, and axles removed from the home.

55 (8) “Manufactured home” means a structure, including the plumbing, heating, air
56 conditioning, and electrical systems contained in the structure, that is:

57 (A) transportable in one or more sections;

58 (B) in the traveling mode, eight body feet or more in width or 40 body feet or more in
59 length;

60 (C) built on a permanent chassis;

61 (D) designed to be used as a dwelling with or without a permanent foundation, when
62 connected to the required utilities; and

63 (E) not a self-propelled recreational vehicle.

64 (9) “Person” means an individual, estate, business or nonprofit entity, public corporation,
65 government or governmental subdivision, agency, or instrumentality, or other legal entity.

66 (10) “Purchaser” means a person that takes an interest in property by sale, lease,
67 discount, negotiation, mortgage, deed of trust, pledge, consensual lien, security interest, issue or
68 reissue, gift, or any other voluntary transaction.

69 (11) “Record”, used as a noun, means information that is inscribed on a tangible medium
70 or that is stored in an electronic or other medium and is retrievable in perceivable form.

71 (12) “Retailer” means a person that, in the ordinary course of business, sells
72 manufactured homes to persons other than those in the business of selling or leasing
73 manufactured homes.

74 (13) “Security interest” means an interest in real or personal property which secures
75 payment or performance of an obligation. The term includes a mortgage, deed of trust, and
76 security interest.

77 (14) “Sign” means, with present intent to authenticate or adopt a record:

78 (A) to execute or adopt a tangible symbol; or

79 (B) to attach to or logically associate with the record an electronic symbol, sound, or
80 process.

81 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico,
82 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
83 of the United States.

84 (16) “Unique identifier of the manufactured home” means the name of the manufacturer
85 of the manufactured home, the identification number placed on the home by the manufacturer,
86 and the make, model designation, and model year of the home.

87 Section 2. Sale of Manufactured Home

88 (a) Except as otherwise provided in subsection (c), when a retailer and buyer contract for
89 the sale of a manufactured home, the retailer shall deliver a notice in a record to the buyer and
90 obtain a signed receipt from the buyer. The notice must include the following or substantially
91 similar statements:

92 (1) Under the law of this state, the buyer shall elect whether the home will be real
93 property or personal property if the home is to be located on land controlled by the homeowner.

94 (2) The buyer's election may affect the amount of the monthly payments and costs for a
95 loan to buy the home, the buyer's legal rights in the home, and the taxation of the home.

96 (3) The buyer should consult a trusted adviser, other than the retailer, about this election.

97 (b) Except as otherwise provided in subsection (c), a seller may not direct or otherwise
98 steer a buyer to classify the manufactured home as real property or personal property for
99 purposes of financing or otherwise.

100 (c) Subsections (a) and (b) do not apply to a sale to a person that buys for resale.

101 (d) If a sale of a manufactured home by a retailer is not governed by the warranty
102 provisions that apply to a sale of goods apply to the sale of the manufactured home, and any
103 rights arising from breach of warranty.

104 (e) When a manufactured home is sold, the seller shall deliver to the buyer at the time of
105 sale the certificate of title for the home. If the seller does not have a certificate of title because
106 the home is real property at the time of sale, the seller shall deliver a certified copy of the most

107 recent certificate of location for the home and of the deed, if any, by which the seller acquired
108 title to the home.

109 (f) If, not later than 10 days after buying a new manufactured home, a buyer files a
110 certificate of location for recording in accordance with Section 4, the buyer need not obtain a
111 certificate of title for the home.

112 Section 3. Conversion of Home to Real Property

113 (a) In this section, “affidavit of lost document” means a record in recordable form which
114 includes:

115 (1) the name of the owner of the manufactured home that is the subject of the affidavit;

116 (2) the unique identifier of the manufactured home;

117 (3) the homeowner’s representations that the homeowner:

118 (A) owns the home; and

119 (B) cannot reasonably obtain possession of the certificate of title because the certificate
120 was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of a
121 person who will not surrender it, an unknown person, or a person that cannot be found;

122 (4) the name and, if known, address of the person from which the homeowner acquired
123 the home;

124 (5) the homeowner’s signature; and

125 (6) the date the homeowner signed the affidavit.

126 (b) If a manufactured home is or will be located on land controlled by the homeowner,
127 the homeowner may elect to file a certificate of location for recording in the land records of the
128 county in which the home is or will be located.

129 (c) Subject to Section 8(a) and (b), if a certificate of location substantially conforms to
130 Section 2(2), the manufactured home is real property for all purposes when the home is located
131 and the certificate is filed.

132 (d) If a certificate of title must be attached to the certificate of location but the
133 homeowner cannot locate or obtain the certificate of title the homeowner may attach an affidavit
134 of lost document to the certificate of location instead of the certificate of title.

135 (e) If a manufactured home is moved to this state from another state or from land in this
136 state for which a certificate of location was filed for recording, the homeowner shall obtain a
137 certificate of title for the home, unless the homeowner files a certificate of location for recording
138 in the land records of the county to which the home is moved not later than the time period
139 provided under law after the home is moved. The homeowner may file a certificate of location
140 only if the home is or will be located on land controlled by the homeowner

141 Section 4. Relocation of Manufactured Home

142 If a manufactured home is moved from land in this state for which a certificate of
143 location has been filed for recording, the person causing the home to be relocated shall file a
144 certificate of relocation for recording in the land records of the jurisdiction from which the home
145 has been or will be relocated not later than ten days after it is relocated. If the person causing the
146 home to be relocated does not own the home, that person also shall file, with the certificate of

147 relocation, an affidavit that it has the right to relocate the home and a certified copy of any
148 required judgment or order authorizing it to do so.

149 Section 5. Recording

150 (a) If a certificate of location or certificate of relocation is filed for recording, the
151 registrar shall record it, together with any attachments, index it, and return it to the person that
152 requested the return.

153 (b) If a certificate of title is filed for recording as an attachment to a certificate of
154 location, the registrar shall stamp or make a notation on the certificate of title that it is no longer
155 valid.

156 Section 6. Buyer in ordinary course of business; Free from Security Interests Created by
157 Seller

158 (a) In this section, “buyer in ordinary course of business” means a person that buys a
159 manufactured home that is real property in good faith, without knowledge that the sale violates
160 the rights of another person in the home, and in the ordinary course from a person in the business
161 of selling manufactured homes. A person buys a manufactured home in ordinary course if the
162 sale comports with the usual or customary practices in manufactured home sales or with the
163 seller’s own usual or customary practices. A buyer in ordinary course of business may buy for
164 cash, by exchange of other property, or on secured or unsecured credit, and may acquire a home
165 under a preexisting contract for sale. Only a buyer that takes possession of the home or has a
166 right to recover the home from the seller under the law of this state may be a buyer in ordinary
167 course of business. A person that acquires homes in a transfer in bulk or as security for or in
168 total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

169 (b) A buyer in ordinary course of business takes free of a security interest in the
170 manufactured home created by the buyer's seller, even if the security interest is perfected and the
171 buyer knows of its existence.

172 Section 7. Effects of Conversion.

173 (a) The following rules apply to a manufactured home that is converted to real property
174 under Section 4:

175 (1) Except as provided in paragraph (2), the rules that determine the rights and remedies
176 of a person that, before conversion of the manufactured home to real property under Section 4,
177 had a security interest in the manufactured home, and the effectiveness and priority of the
178 security interest under this act against a purchaser and a creditor, are those that would apply, on
179 conversion to real property, the manufactured home became a fixture as that term is used.

180 (2) If the manufactured home became a fixture, as that term is used before conversion to
181 real property under Section 4, for purposes of paragraph (1) the home must be treated as having
182 become a fixture at the earlier time.

183 (3) A copy of a financing statement or certificate of title that is attached to a certificate of
184 location and that was sufficient to perfect a security interest in the manufactured home
185 immediately before conversion to real property constitutes a fixture filing under covering the
186 manufactured home and provides sufficient notice so that a subsequent bona fide purchaser of
187 the manufactured home takes subject to the security interest.

188 (b) The following rules apply to a manufactured home that is real property under Section
189 4 and is subsequently detached from the land on which it is located:

190 (1) The manufactured home becomes personal property.

191 (2) Except as provided in paragraph (3), the rules that determine the rights of a person
192 that, immediately before detachment, had a security interest in the manufactured home arising
193 under real property law, and the effectiveness and priority of the security interest against a
194 purchaser and a creditor, are those that apply.

195 (3) On default a person that, immediately before detachment, had a security interest in
196 the manufactured home arising under real property law may proceed under real property law.
197 The remedies under are subject to laws.

198 (c) Each transfer of a right, title, or interest in a manufactured home that is real property
199 must be made in accordance with real property law and must include a legally sufficient
200 description of the land on which the home is located. If the manufactured home is sold
201 separately from the land, the conveyance document for the home must include the unique
202 identifier of the manufactured home.

203 (d) Title to a manufactured home remains separate from the title to the land on which it is
204 located though the home has become real property. Title to the home is not encumbered by a
205 security interest in or other encumbrance in or on the title to the land. Title to the land is not
206 encumbered by a security interest in or other encumbrance in or on the title to the home.

207 (e) If a manufactured home is located on land that the homeowner does not own, the
208 terms of a land lease and the landlord's and homeowner's rights and duties under the lease are
209 not affected by conversion of the home to or from real property.

210 Section 8. Relation to other law

211 (a) If a manufactured home becomes real property it is not a fixture and, except as
212 otherwise provided in Section 8, is not subject to the law of fixtures.

213 (b) Unless displaced by provisions of this chapter principles of law and equity
214 supplement its provisions.

215 (c) Filing a certificate of location for recording does not itself constitute a subdivision of
216 land.

217 Section 9. Home Warranty

218 A warranty that applies to a manufactured home when it is sold and rights arising from a
219 breach of the warranty are not affected by a subsequent change in the home's classification as
220 real or personal property. No additional warranty applies to a manufactured home solely because
221 of a subsequent change in the home's classification as real or personal property.

222 Section 10. Remedy for Noncompliance

223 (a) A person injured by another person's failure to comply with this chapter may be
224 awarded damages and obtain other relief.

225 (b) If a retailer violates Section 3(a) or if a seller, including a retailer, violates Section
226 3(b) or (e), it is subject to the remedies and penalties available to a consumer and to the Attorney
227 General under the consumer protection act

228 (c) A person that does not comply with the requirements of Section 5 is subject to civil
229 penalty.

230 (d) This section does not limit other remedies of an injured person.

231 Section 11. Uniformity of Application and Construction

232 In applying and construing this uniform act, consideration must be given to the need to
233 promote uniformity of the law with respect to its subject matter among states that enact it.

234 Section 12. Relation to Electronic Signatures in Global and National Commerce Act

235 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
236 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede
237 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of
238 the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

239 Section 13. Savings Clause

240 This chapter does not affect an action or proceeding commenced before the effective date
241 of this act.