

ASSEMBLY, No. 1181

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DALTON

1 AN ACT concerning the rights and obligations of manufactured mobile
2 home owners and manufactured housing community operators,
3 supplementing chapter 8C of Title 46 and repealing section 4 of
4 P.L.1973, c.153 (C.46:8C-4) and section 2 of P.L.1983, c.399
5 (C.46:8C-9).

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 1. This act shall be known and may be cited as the "Manufactured
11 Home Owner's Bill of Rights."

12
13 2. The Legislature finds that:
14 Unregulated market forces result in unfair and unconscionable
15 practices in manufactured housing community tenancies and that, once
16 a home is situated on a community site, the difficulty and cost of
17 moving the home gives the community operator disproportionate
18 power in setting the rent, fees, rules, and other aspects of the tenancy.
19 In addition, the shortage of community spaces, existing law as to
20 eviction rights, community operator restrictions of a homeowner's sale
21 of his home, and changes in the land use of the community by the
22 community owner exacerbate these homeowners' problems. This
23 legislation protects homeowners from community operator abuses and
24 provides homeowners a minimum of security in their homes.

25
26 3. As used in this act:
27 "Community operator" means an owner or manager of a
28 manufactured housing community, including community employees
29 and any subsequent purchaser of a community.

30 "Homeowner" is a person owning a manufactured home who has a
31 tenancy in a manufactured housing community under a rental
32 agreement. The term shall not include a person dwelling in an
33 apartment under a rental agreement.

34 "Homeowner association" means any organization of homeowners
35 of the community, which is organized for the purpose of resolving

1 matters relating to living conditions in the manufactured housing
2 community.

3 "Rental agreement" means any agreement or lease between a
4 community operator and a homeowner establishing the terms and
5 conditions whereby a manufactured home is placed upon a rented or
6 leased lot in a manufactured housing community.

7 "Manufactured home" is as defined in section 3 of P.L.1983, c.400
8 (C.54:4-1.4).

9 "Manufactured housing community" or "community" means a use
10 of land in which four or more lots or spaces are offered for rent or
11 lease for the placement of manufactured housing and in which the
12 primary use of the community or the manufactured home section in the
13 community is residential.

14

15 4. A community operator shall not:

16 a. Engage in unfair or deceptive acts or practices or unfair methods
17 of competition.

18 b. Require, as a condition to the rental of any site, the purchase of
19 a manufactured home from the community operator, or any dealer,
20 manufacturer, or agent named by the operator.

21 c. Represent to any person that the purchase of a manufactured
22 home from the community operator or any dealer, manufacturer, or
23 agent named by the operator will give the purchaser an advantage over
24 others in the rental or continued occupancy of a site.

25 d. Discriminate or threaten to discriminate regarding the amount
26 of rental charges or in any other respect against a homeowner for
27 failure of the homeowner to purchase a manufactured home from the
28 operator or any dealer, manufacturer or agent named by the operator.

29 e. Solicit or receive any payment or other thing of value from any
30 person upon the representation or understanding that such
31 consideration will give that person an advantage over others in the
32 rental or continued occupancy of a site.

33 f. Use a manufactured housing community site to display an
34 unoccupied manufactured home offered for sale, or rent a site to a
35 manufactured housing dealer for purposes other than accommodation
36 of a manufactured home occupied as a residence, if the use or rental
37 of the site results in there being no site in the manufactured housing
38 community available to a prospective homeowner who does not
39 purchase a manufactured home from the operator or renting dealer.

40 g. Contract for capital improvements of more than \$5,000 without
41 making a good faith effort to obtain the most economical offer of
42 services. The dollar amount of the capital improvement agreed to shall
43 be disclosed to the homeowners.

44 h. Using an unsatisfactory credit history as a basis for denying
45 occupancy of a site by a prospective homeowner in the community
46 unless a credit report shows a history of habitual late payments which

1 shall mean more than six in any two year period, or a bankruptcy or
2 judgment in the two years prior to the application by the prospective
3 homeowner.

4

5 5. The provisions of this section shall not supercede a previously
6 adopted municipal rent control ordinances or any prospective rent
7 control ordinance, rent stabilization agreement or the decisions of a
8 rent control board which pertain to manufactured or mobil home
9 parks.

10 a. All rental agreements shall be for a minimum term of one year
11 to a maximum term of five years at the discretion of the homeowner.

12 b. The homeowner who executes a rental agreement offered
13 pursuant to this section may cancel such agreement by notifying the
14 community operator in writing within seven days of the homeowner's
15 execution of the rental agreement.

16 c. The maximum amount that a community operator may set and
17 seek as damages for a homeowner's early termination of a rental
18 agreement is two months' rent, except that if the manufactured housing
19 space is reoccupied with 20 days of vacating, the damages shall be a
20 maximum of one month's rent.

21 d. During the first rental term, the community operator may
22 propose whatever rental amount it chooses, including rental increases,
23 as long as the amounts or methods of determining the rental amounts
24 and increases are fully and clearly substantiated and disclosed in the
25 rental agreement, are not unreasonable, and are binding on the
26 community operator for the term of the rental agreement.

27 e. The community operator may require, at the inception of the
28 homeowner's first rental agreement, a security deposit not exceeding
29 one month's rental. The security deposit shall be deposited in a State
30 or federally chartered bank, savings bank, or savings and loan
31 association in this State insured by an agency of the federal
32 government in an account bearing interest at the rate currently paid by
33 such institutions and associations on time or savings deposits. The
34 security deposit with interest shall be returned to the homeowner when
35 the lease is terminated provided that the homeowner has paid in full all
36 rent and other charges due, has caused no or only minimal damage to
37 the leased premises, and has left the lot reasonably clean and free of
38 debris. Within 15 days of the termination of the rental agreement, the
39 community operator shall provide the homeowner with an itemized list
40 of charges due and damages to the premises and the estimated cost of
41 repair for each, and tender payment for the difference between the
42 security deposit and the charges due and estimated cost of repair of
43 damages to the premises. Failure to comply with this subsection shall
44 constitute admission by the community operator that no damages are
45 due, and the community operator shall immediately remit to the
46 homeowner the full amount of the security deposit.

1 f. At the expiration of a rental agreement, the agreement will be
2 automatically renewed for a term of five years with the same terms as
3 the previous rental agreement, unless the homeowner notified the
4 community operator at least 30 days prior to the agreement's
5 termination of an intent to move or the community operator seeks to
6 change the terms of the agreement pursuant to subsections g. and h.
7 of this section.

8 g. Six months prior to the end of a rental term in a community, the
9 operator shall offer the homeowner a renewal rental agreement with
10 a term of at least five years with a proposed rental amount and any fee
11 or other lease changes for that term.

12 h. If the homeowner does not accept the new terms, the community
13 operator may initiate a binding appraisal process, pursuant to section
14 15 of this act, at which time an appraiser mutually agreed upon by the
15 homeowner and community operator shall determine the fair market
16 value of the lot rent and other charges over the next five years, based
17 on the existing rental agreements applicable to other manufactured
18 homes of other homeowners in other sections of the same community.
19 The amount determined by the appraiser, including any built-in
20 increases, shall be binding for the next five year period.

21 i. Homeowners with existing rental agreements not complying with
22 this act shall, as soon as practical, be offered a five-year rental
23 agreement complying with this act, effective on the termination of their
24 existing rental agreement. If the homeowner does not accept the
25 terms, the homeowner may initiate a binding appraisal process
26 pursuant to section 15 of this act, at which time an appraiser mutually
27 agreed upon by the homeowner and community operator shall
28 determine the fair market value of the lot rent and other charges over
29 the next five years, based on new rental agreements applicable to other
30 manufactured homes of other homeowners in the same section of the
31 same community, and, if necessary, new rental agreements in other
32 comparable communities. The amount determined by the appraiser,
33 including any rental increases, shall be binding for the five year period.

34 j. During the term of the rental agreement, if the community
35 operator decreases any services which the community operator agreed
36 to provide in the rental agreement, the community operator shall
37 reduce the rental amount accordingly. If the community operator fails
38 to comply with the requirements of this subsection, individual
39 homeowners or a homeowner association may initiate a binding
40 arbitration proceeding, pursuant to section 15, to determine the
41 appropriate reduction in rent, and to determine the amount of the
42 refund, if any, the community operator may owe homeowners for
43 excess rent payments charged.

44
45 6. a. The community operator shall not charge homeowners any
46 fees or charges other than the monthly rent charge, except for

1 use-based charges that are set out in the rental agreement. As used in
2 this section, use-based charges are charges for services, facilities, or
3 capital improvements that are based on the amount of a homeowner's
4 use of a particular service, facility or capital improvement. A charge
5 is not use-based if a homeowner is charged even when he does not use
6 the service, facility, or capital improvement, or if different
7 homeowners are assessed the same charge for using different levels of
8 service, facilities, or capital improvements.

9 b. Charges for existing use-based services or facilities shall be
10 included in the terms of the rental agreement, and can only be
11 increased as provided in the rental agreement. Any increase shall be
12 reasonably related to the increases in the community operator's costs
13 for those services or facilities.

14 c. The following fees are specifically prohibited and any rental
15 agreement provision establishing such fees is void:

16 (1) Entrance and exit fees.

17 (2) Fees for a homeowner's resale of the home, assignment of the
18 lease, or sublet of the home.

19 (3) Fees for additional family members.

20 (4) Short-term guest fees.

21 (5) Pet fees, unless special facilities are provided for pets or
22 additional costs are incurred for maintenance of grounds.

23 d. The community operator may charge a penalty for late payment
24 of rent or other fees after such payments are 15 days delinquent. Such
25 late charge shall not exceed five percent of the amount owed and may
26 be imposed only once for a particular payment.

27 e. A community operator's utility service charge may not exceed
28 prevailing residential utility rates in the vicinity, must be use-based as
29 provided in subsection b. of this section, and shall be periodically
30 invoiced in writing, specifying the charge, the rate, and the amount of
31 the utility service used. The community operator shall post in a
32 conspicuous place the prevailing residential utilities rate schedule as
33 published by the serving utility.

34 f. No community operator shall restrict the choice of vendors from
35 whom a homeowner may purchase goods or services, or in any other
36 way engage in conduct that discourages homeowners from selecting
37 the vendor of their choice. This subsection shall not apply to:

38 (1) Snow removal, lawn care, or similar site maintenance services
39 performed by the community operator, upon the failure of a
40 homeowner to fulfill the homeowner's site obligations under the rental
41 agreement. No charges may be imposed for site maintenance services
42 performed by the operator under this paragraph unless the homeowner,
43 if available, is given prior notice and a reasonable opportunity to
44 perform the homeowner's obligation under the rental agreement.
45 Charges for site maintenance services shall be set forth in the rental
46 agreement, and shall be reasonable and limited to the community

1 operator's actual costs.

2 (2) A non-discriminatory prohibition against sales solicitations
3 within the manufactured housing community.

4

5 7. a. The community operator may promulgate rules governing the
6 rental occupancy of a manufactured home lot and the use of common
7 areas and facilities, but no such rule shall be unreasonable, unfair, or
8 unconscionable.

9 b. Any rule which does not apply uniformly to all manufactured
10 home homeowners of a similar class shall create a rebuttable
11 presumption that the rule or change in the rule is unfair.

12 c. Each common area facility shall be open or available to
13 homeowners at all reasonable hours and the hours of the common
14 recreational facility shall be posted at the facility.

15 d. If a bona fide homeowner association exists for a community,
16 then no rule or rule change shall be implemented without the approval
17 of the organization. If approval is withheld, the community operator
18 may initiate an arbitration procedure with the homeowner association
19 pursuant to section 15 of this act. If the arbitrator finds that the rule
20 or rule change is unreasonable, unfair, or unconscionable, it shall not
21 be implemented without the consent of the association. If no
22 homeowner association exists, the rule or rule change shall be
23 submitted directly to the Department of Community Affairs for review
24 and prior approval. Any party in interest may appeal the approval or
25 failure to approve to a court of appropriate jurisdiction.

26 e. Except in a bona fide emergency, no rule or rule change shall be
27 effective until at least 60 days after the homeowners receive notice of
28 the change.

29 f. Anytime a rule is enforced against a homeowner, the
30 homeowner may seek judicial review of the rule.

31

32 8. a. All rental agreements and renewal agreements shall be in
33 writing and signed by the community operator or manager and the
34 homeowner. The community operator shall give the homeowner a
35 copy of the community's standard rental agreement, with all
36 community rules and attachments, and the pamphlet required by
37 subsection e. of this section, at the time the prospective homeowner
38 initially contacts the community concerning a prospective vacancy.
39 The community operator shall also give the homeowner a completed
40 agreement after the rental agreement has been signed.

41 b. Any rental agreement or renewal agreement shall contain, but is
42 not limited to, the following provisions:

43 (1) The rental term, which shall be at least five years, and a
44 statement of the homeowner's right to a five-year renewal agreement
45 at a fair market rental value.

46 (2) The monthly rental amount and the method for specifically

1 determining the amount of any changes in rent over the lease term. If
2 the rent amount changes over the term of the lease, and the lease does
3 not specify the dollar amount of the subsequent rent levels, the rental
4 agreement shall clearly set forth the formula or method for determining
5 those changes, and must also give clear and realistic examples of how
6 such formula or method would work in each year of the lease term.

7 (3) The rules of the community.

8 (4) A warranty of habitability, as specified in section 9 of this act.

9 (5) A description of the community operator's maintenance
10 responsibilities.

11 (6) A list of facilities and services which the community operator
12 will provide.

13 (7) Any late charges, fees, or charges for services, including any
14 increases during the term of the lease. If the amount of fees or
15 charges change over the term of the lease, and the lease does not
16 specify the dollar amount of the subsequent levels of fees or charges,
17 the rental agreement must clearly set forth the formula or method for
18 determining those charges, and must also give clear and realistic
19 examples of how this formula or method would work in each year of
20 the lease term.

21 (8) Disclosure of the community operator's reservation of the right
22 to evict a homeowner for a change in the use of the property during
23 the lease term.

24 (9) If there is a temporary zoning permit for the use of the land, the
25 date when the zoning permit expires.

26 (10) A description of the homeowner's manufactured home site and
27 its address or site number, and the number and location of any
28 accompanying automobile parking spaces.

29 (11) The community operator's name and address for the delivery
30 of all official notices and also the name and telephone number of the
31 individual who can be contacted for emergency maintenance, pursuant
32 to subsection c. of section 9 of this act.

33 (12) The amount of any security deposit imposed by the
34 community operator.

35 (13) Any penalties the community operator may impose for the
36 homeowner's early termination.

37 (14) The grounds for eviction.

38 (15) All other terms or conditions of occupancy.

39 (16) A prominent disclosure that the homeowner's rights and
40 community operator's obligations are set out in a pamphlet attached to
41 the rental agreement.

42 (17) A prominent disclosure that the homeowner can cancel the
43 rental agreement with no obligation for the next seven days after
44 signing the agreement.

45 c. Any provision for rent increases or increases in fees over the
46 term of the lease shall be initialed by the homeowner.

- 1 d. The rental agreement shall be clearly written in understandable
2 language, in at least ten-point type, by a typewriter or word processor,
3 in a form and presentation approved by the Department of Community
4 Affairs.
- 5 e. The Department of Community Affairs shall produce and
6 disseminate within 90 days of the effective date of this act a pamphlet
7 setting forth clearly and in detail the homeowners' and community
8 operators' rights and obligations as set forth in this act.
- 9 f. A community operator shall attach one copy of the pamphlet
10 specified in subsection e. of this section to each rental agreement.
- 11 g. No rental agreement shall contain any terms which are illegal,
12 unfair, unconscionable, or unenforceable.
- 13
- 14 9. a. In any rental agreement, the community operator is deemed
15 to covenant and warrant that the space and its associated facilities are
16 fit for human habitation.
- 17 b. The community operator shall:
- 18 (1) Comply with codes, statutes, ordinances, and administrative
19 rules applicable to the manufactured housing community;
- 20 (2) Maintain all common areas of the community in a clean and
21 safe condition;
- 22 (3) Maintain in good working order all electrical, plumbing,
23 sanitary, and appliances and recreational facilities which it furnishes;
- 24 (4) Maintain and protect all utilities provided to the manufactured
25 home and keep water and sewer lines in good working condition.
26 Maintenance responsibility shall extend to ensuring that the normal
27 manufactured home utility "hookups" connect to those provided by the
28 community operator or utility company;
- 29 (5) Maintain in a safe and secure location individual mailboxes for
30 the homeowners;
- 31 (6) Maintain roads within the manufactured housing community in
32 good and safe condition including snow removal, adequate drainage,
33 and water supply, and be responsible for damage to any vehicle which
34 is the direct result of any unrepaired or poorly maintained access road
35 within the community;
- 36 (7) Take reasonable steps to exterminate rodents, vermin, or other
37 pests dangerous to the health and safety of the homeowners whenever
38 infestation exists on the common premises or in the interior of a
39 manufactured home as a result of infestation existing on the common
40 premises;
- 41 (8) Maintain the premises and regrade them when necessary to
42 prevent the accumulation of stagnant water and the detrimental effects
43 of moving water;
- 44 (9) Take all necessary steps to maintain the integrity of the
45 foundation of the homeowner's manufactured home;
- 46 (10) Keep the common areas of the community free from any

1 species of plant growth which are noxious or detrimental to the health
2 of the homeowners while protecting the integrity of desirable plant
3 growth on lots in the community;

4 (11) Provide suitable containers and arrange for and assume the
5 cost for the removal of garbage, rubbish, and other waste incidental to
6 the occupancy of the manufactured housing space.

7 (12) Provide the homeowners, upon request, with written status
8 reports on repairs and other maintenance either pending or in progress
9 along with written estimates of completion dates;

10 (13) Make available to any person making a request, at reasonable
11 times, the operator's current listing of any manufactured homes in the
12 community that are available for purchase; and

13 (14) Disclose to any prospective homeowners any hazardous
14 substances underneath or in the immediate vicinity of the property on
15 which the manufactured home is placed including underground oil
16 tanks.

17 c. The community operator shall authorize a manager, assistant
18 manager, or other employee to make repairs that are the responsibility
19 of the community operator or enter into a contract with a third party
20 for such repairs. The community operator shall contract with a third
21 party to provide emergency repairs that are the responsibility of the
22 community operator on occasions when the manager, assistant
23 manager, or other designated employee are not physically present in
24 the community, and shall notify each homeowner of the telephone
25 number at which such third party may be reached directly.

26 d. If the community operator fails to comply with subsection a., b.
27 or c., the homeowner may recover damages pursuant to the procedure
28 set forth in section 16 of this act. The homeowner may also opt to
29 notify the community operator of the homeowner's intention to correct
30 the condition at the community operator's expense. After being
31 notified by the homeowner in writing, if the community operator fails
32 to comply within 15 days or more promptly as conditions reasonably
33 require in case of emergency, the homeowner may cause the work to
34 be done by a contractor or by the homeowner himself and, after
35 submitting to the community operator an itemized statement, deduct
36 from the homeowner's rent the actual and reasonable cost of the work.

37
38 10. a. The owners of manufactured homes in a community may
39 organize as a corporation or association either for profit or not for
40 profit. The membership of a homeowner association may elect officers
41 of the association at a meeting at which a majority of members are
42 present. All homeowners may attend meetings, but the community
43 operator and his employees shall not be members and shall not attend
44 meetings unless specifically invited to a particular part of a meeting.
45 A homeowner association may not impose fees or dues upon its
46 members or the homeowners unless a majority of the members or

1 homeowners agree to the specific fees or dues. No officer or member
2 of a homeowner association shall be personally financially responsible
3 for the acts or omissions of the association or any other officers or
4 members of the association. If the owners of manufactured homes in
5 a community form an association in order to purchase the community,
6 they shall do so in accordance with P.L.1991, c.483 (C.46:8C-10 et
7 seq.).

8 b. It shall be unlawful for a community operator to increase a
9 homeowner's rent or decrease services, change community rules, bring
10 or threaten to bring an action for eviction or other civil action, or take
11 any other action because, or in retaliation after:

12 (1) The homeowner has expressed an intention to complain or has
13 complained to a governmental agency about conditions in the
14 community.

15 (2) The homeowner has made any complaint in good faith to the
16 community operator.

17 (3) The homeowner has filed or expressed an intention to file a
18 lawsuit or administrative action against the community operator.

19 (4) The homeowner has organized or is a member of a homeowner
20 association.

21 (5) The homeowner has performed or expressed an intent to
22 perform any other act for the purpose of asserting, protecting or
23 invoking the protection of any right secured to homeowners under any
24 federal or state law or municipal ordinance.

25 c. Any attempt to evict a homeowner, except for nonpayment of
26 rent, within six months after the homeowner has taken action as
27 described in paragraph (5) of subsection b. of this section shall create
28 a rebuttal presumption that the eviction action is in retaliation against
29 the homeowner.

30 d. No community operator shall harass or threaten any homeowner
31 association, or engage in any unfair or deceptive conduct to inhibit or
32 interfere with the creation or operation of the association by the
33 homeowners.

34 e. The community operator shall meet and consult with
35 homeowners upon written request, either individually, collectively, or
36 with representatives of a group of homeowners who have signed a
37 request to be so represented on the following matters:

38 (1) Amendments to community rules and regulations.

39 (2) Standards for maintenance of physical improvements in the
40 community.

41 (3) Addition, alteration or deletion of services, equipment or
42 physical improvements.

43 f. Except in the case of an emergency or when the homeowner has
44 abandoned the manufactured home, the community operator shall have
45 no right of entry to a manufactured home without the prior written
46 consent of the homeowner. This consent may be revoked in writing

1 by the homeowner at any time. The community operator shall have a
2 right of entry upon the land where a manufactured home is situated for
3 maintenance of utilities, for maintenance of the premises, and
4 protection of the manufactured housing community, at any reasonable
5 time, but not in a manner or at a time which would interfere with the
6 homeowner's quiet enjoyment of his property.

7

8 11. a. The community operator may terminate the rental
9 agreement only by following the procedures as provided in subsection
10 d. of this section and only for one or more of the following reasons:

11 (1) Nonpayment of rent, as specified in subsection b. of this
12 section.

13 (2) Violation of a community rule as specified in subsection c. of
14 this section.

15 (3) Disorderly conduct that results in disruption of the rights of
16 others to the peaceful enjoyment and use of the premises, endangers
17 other homeowners or community personnel or causes substantial
18 damage to the community premises.

19 (4) The homeowner's conviction of a crime, commission of which
20 threatens the health, safety, or welfare of the other homeowners or the
21 community operator, all as specified in subsection c.

22 (5) Changes in the use of the land if the requirements of section 13
23 of this act are met.

24 b. No community operator may institute eviction procedures as
25 provided in subsection d. of this section for non-payment of rent until
26 45 days have elapsed from the date the homeowner receives notice
27 that rent is delinquent, and only if the homeowner has not tendered
28 that delinquent payment during that 45 day period. Nonpayment of any
29 fees or late charges shall not be grounds for eviction. Any payment
30 made by a homeowner to a community operator shall be allocated first
31 to delinquent rent payments, then to current rent payments, and last to
32 fees, charges, or late fees.

33 c. Violation of a community rule or regulation shall be grounds for
34 eviction only if the rule has been properly promulgated pursuant to
35 section 7 of this act, the rule is not unfair, unreasonable, or
36 unconscionable, the homeowner has had at least 60 days' notice of the
37 rule before the violation took place; the rule violation is likely to
38 continue or recur; and the continuing violation or recurrence would
39 have a significant adverse impact on the community or its
40 homeowners. The conduct set out in subparagraph (3) of subsection
41 a. shall be grounds for eviction only if there is a likelihood of future
42 conduct that would also be grounds for eviction pursuant to that
43 subsection. There is no such likelihood if the conduct or conviction
44 was committed by a member of the homeowner's household, and not
45 by the homeowner, and such other person is no longer living in the
46 home and is not likely to return to the home.

1 d. The community operator may terminate the rental agreement or
2 evict the homeowner only by instituting an action in Superior Court.
3 The court shall determine if the grounds for eviction as provided in
4 this section have been met. No eviction shall be ordered if the court
5 determines that the eviction proceeding is in retaliation for the
6 homeowner's conduct, as provided in subsection b. of section 10 of
7 this act.

8 e. In any eviction action for non-payment of rent, the homeowner
9 shall be entitled to raise, by defense or counterclaim, any claim against
10 the community operator relating to or arising out of such tenancy for
11 breach of warranty, for breach of the rental agreement, or violation of
12 any law. The amounts which the homeowner may claim under this
13 subsection shall include, but shall not be limited to, the difference
14 between the agreed-upon rent and the fair value of the use and
15 occupation of the manufactured home lot, any amounts reasonably
16 spent by the homeowner to repair defects in the manufactured housing
17 community and any damages as provided in section 16 of this act. The
18 court, after hearing the case, may require the homeowner raising a
19 claim under this section to deposit with the clerk of the court an
20 amount equal to the fair value of the use and occupation of the
21 premises less the amount awarded the homeowner for any claim under
22 this section, or such installments thereof from time to time as the court
23 may direct, for the occupation of the premises. These funds may be
24 expended for the repair of the premises by the persons as the court
25 after hearing may direct, including, if appropriate, a receiver. When
26 all of the conditions found by the court have been corrected, the court
27 shall direct that the balance of funds, if any, remaining with the clerk
28 be paid to the community operator.

29 f. Any court order for eviction based on the homeowner's
30 nonpayment of rent shall specify that the sheriff or constable shall not
31 serve an eviction notice for at least 30 days after the court order and
32 that the homeowner can cure the eviction order by paying the full
33 amount due up until the time the homeowner is actually evicted by the
34 sheriff or constable. A court order for eviction for reasons other than
35 non-payment of rent may specify conditions whereby the homeowner
36 can cure the violation and remain in the tenancy.

37 g. Notwithstanding the provisions of N.J.S.12A:9-503, a secured
38 party, in taking possession of a manufactured home, must proceed
39 through judicial process.

40 h. A homeowner who has been evicted from the community shall
41 have 180 days in which to sell his manufactured home in the
42 community. The homeowner shall be responsible for paying the rental
43 amount during that period and for regular maintenance of the
44 manufactured home lot during such 180-day period. The community
45 shall have a lien on the home to the extent these payments are not
46 made or the maintenance is not performed, and during that period no

1 one may reside in the home.

2

3 12. a. No community operator shall limit the sale of manufactured
4 homes on the basis of the home's age or physical condition or in any
5 way misrepresent that such homes may not be sold.

6 b. No community operator or employee of the community shall act
7 as agent or broker in the sale of a homeowner's manufactured home,
8 nor shall the community operator or employee exact a commission or
9 fee from the sales of any home owned by a homeowner.

10 c. No community operator shall place unreasonable, unfair, or
11 discriminatory restrictions on "For Sale" signs or on access to the
12 community by prospective purchasers or realtors, or interfere with a
13 homeowner's efforts to sell a manufactured home.

14 d. Except as specified in subsections e. and f., a homeowner shall
15 have the right to assign the rental agreement to the purchaser of the
16 homeowner's manufactured home, or to sublease the manufactured
17 home site.

18 e. Notwithstanding the provisions of section 3 of P.L.1973, c.153
19 (C.46:8C-3) to the contrary, the homeowner shall give the community
20 operator notice of any assignment or sublease, and the community
21 operator may disapprove of the assignment or sublease only, if within
22 seven calendar days, it gives the homeowner written notice of the
23 disapproval, with the reasons for the disapproval stated therein,
24 provided that such disapproval shall be only for the reasons as
25 provided in subsection f. of this section.

26 f. The community operator may disapprove the assignment of a
27 rental agreement or a sublease only if the assignee or sublessee does
28 not have the financial ability to pay the rental amount or would pose
29 an unreasonable hazard to the safety or peaceful enjoyment of the
30 homeowners of the manufactured housing community. The age or
31 condition of the manufactured home shall not be grounds for
32 disapproving an assignment or sublease. The community operator
33 shall not impose an application or other fee on the prospective
34 assignee or sublessee. The community operator shall not disapprove
35 an assignment from the homeowner to the homeowner's bonafide
36 creditor.

37 g. The homeowner or prospective sublessee or assignee may seek
38 judicial review of the community operator's disapproval, and the
39 burden shall be on the community operator to prove that the
40 disapproval was for reasons permitted by subsection f. and that such
41 disapproval was objectively reasonable and in good faith. If the court
42 finds that the disapproval was not justified, the court shall order the
43 assignment or sublease of the rental agreement and award any actual
44 damages, costs, and reasonable attorney's fees to the homeowner or
45 prospective sublessee or assignee. If the court finds that the
46 disapproval by the community operator was not in good faith, the

1 court shall instead award treble damages, but no less than two months'
2 rent, costs, and attorney's fees.

3

4 13. a. The community operator may terminate a rental agreement
5 in order to change the community's land use only if all of the following
6 conditions are met:

7 (1) the rental agreement or renewal agreement clearly and
8 conspicuously discloses a change in land use as a ground for
9 terminating the rental agreement;

10 (2) notice is sent to the homeowner as specified in subsection b. of
11 this section;

12 (3) payment has been made to the homeowner pursuant to
13 subsection c. of this section or the homeowner's home has been
14 relocated, pursuant to subsection d. of this section; and

15 (4) the community operator has a present intent to change the land
16 use to a use other than a manufactured housing community.

17 b. To terminate a rental agreement for a change in land use, the
18 community operator must send notice to a homeowner at least 18
19 months before the change in land use, specifying the date of the
20 proposed changed land use. The homeowner, at any time during the
21 next 12 months, may elect to sell the home to the community for its
22 fair market value as determined by an independent appraiser, or to
23 have the community operator, at his expense, relocate the home,
24 pursuant to subsection d., to another community within a 100 mile
25 radius. The homeowner may specify the date of the sale or relocation.
26 The notice shall also inform the homeowner that the homeowner may
27 elect the date of the home sale or relocation at any time from receipt
28 of the notice until the date of the changed land use. If the homeowner
29 has not made this election within 12 months, the community operator
30 may make the election without six months' notice to the homeowner.

31 c. If purchase of the manufactured home by the community
32 operator is elected, the purchase price, unless the parties agree
33 otherwise, shall be determined by an appraiser agreed upon by the
34 homeowner and the community operator. The purchase price shall be
35 based on the home's fair market retail value, as presently sited, with all
36 appurtenances thereto. The fair market value shall take into account
37 the siting of the manufactured home.

38 d. If relocation of the manufactured home is elected, the
39 community operator shall bear the full cost and responsibility to
40 disconnect and move the home, transport it to the new site selected by
41 the homeowner, and re-site the home with all hookups so that it is
42 substantially in the same condition as before the move, with any
43 required and comparable appurtenances. The community operator
44 shall be responsible for all repairs to bring the home to its former
45 condition, as well as suitable substitute lodging for the homeowner
46 until the move and repairs are completed.

1 14. a. The Commissioner of Community Affairs shall submit a
2 report to the Legislature within six months of the effective date of this
3 act delineating any legal impediments presently existing in State law
4 to cooperative, condominium or other similar purchase of
5 manufactured housing communities by homeowner associations or
6 other groups of homeowners, and proposing the legal changes
7 necessary to remove those impediments.

8 b. The commissioner shall prepare a report for dissemination at a
9 minimal charge to the public compiling information from other states
10 on successful approaches and methods for homeowner associations
11 and other groups of homeowners to purchase manufactured housing
12 communities.

13
14 15. a. If the homeowner or homeowner association and the
15 community operator fail to select an appraiser or arbitrator pursuant
16 to subsections h., i., and j. of section 5, subsection d. of section 7, or
17 subsection c. of section 13 of this act, the court, upon application of
18 a party, shall appoint an arbitrator or appraiser.

19 b. The arbitrator or appraiser decision shall be a signed written
20 document, with copies provided to each party. The decision shall
21 apportion expenses and other fees incurred between the parties as is
22 equitable, except that the fees for the arbitrator or appraiser shall be
23 divided equally by the two parties.

24 c. Parties have the right in the arbitration or appraisal procedure to
25 be represented by attorneys or, in the case of the homeowner, by the
26 homeowner association.

27 d. Upon application of a party, a court may vacate, modify or
28 correct a decision if the decision was procured by undue means; there
29 was evident partiality of an appraiser or arbitrator, or misconduct
30 prejudicial to the rights of a party; the arbitrator or appraiser
31 exceeded his powers; or the decision was demonstrably irrational. If
32 the court vacates a decision, it shall appoint a new arbitrator or
33 appraiser.

34
35 16. a. A community operator who fails to comply with any
36 requirement of this act shall be liable to a homeowner, an applicant for
37 residency, or a homeowner association for the sum of:

38 (1) any actual damage, including any emotional distress, sustained
39 by that homeowner, applicant for residency, or homeowner
40 association;

41 (2) in the case of an individual action, twice the monthly rental
42 amount; in the case of a class action, one month's rent for each class
43 member; in the case of an action by a homeowner association, the sum
44 of \$1,000;

45 (3) the homeowner or homeowner association's reasonable
46 attorney's fees and costs, including an upward multiplier of the fees to

- 1 account for the contingent nature or other risk of the litigation.
- 2 b. The court shall have authority to order temporary and permanent
3 injunctive relief and such other equitable relief as may be appropriate,
4 including appointment of a receiver to operate the community, if
5 necessary.
- 6 c. Whenever a court determines that a community operator's
7 violation is willful or reckless, or if a court finds that the community
8 operator has not attempted to resolve the dispute in good faith, the
9 court shall award at least treble actual damages in addition to the relief
10 specified in subparagraphs (2) and (3) of paragraph (a) of this section,
11 and may in its discretion award punitive damages greater than treble
12 actual damages. There shall be a presumption that any attempt to
13 unlawfully evict a homeowner or terminate utility service, or prevent
14 the homeowner from entering the homeowner's home is a willful or
15 reckless violation of section 11 of this act.
- 16 d. In addition to any damages which may be awarded under a claim
17 of frivolous action, if the court finds that the action brought by the
18 homeowner or homeowner association was brought in bad faith,
19 knowing that the action was groundless, and was brought for purpose
20 of harassment, the court shall award the community operator
21 reasonable attorney's fees, but only as necessary to defend the action
22 relating to this act.
- 23 e. The provisions of this act shall not bar any claim against any
24 person.
- 25 f. For purposes of a homeowner enforcing rights under the rental
26 agreement, all terms required by this act to be included in the rental
27 agreement shall be deemed as a matter of law to be part of the rental
28 agreement, whether incorporated in the actual agreement or not.
- 29 g. A homeowner shall have a lien against the realty on which his
30 manufactured house is situated for amounts owed the homeowner
31 pursuant to section 13 or 16 of this act, for the cost of any relocation
32 that the community operator is obligated to perform under section 13
33 of this act but fails to perform or complete, and for all costs and fees
34 associated with enforcing this obligation.
- 35 h. The rights of homeowners or obligations of community
36 operators under this act shall not be waived by any provision of the
37 rental agreement, the community rules, or any attachments to them.
38 In addition to the remedies specified in this section and section 17, any
39 agreement attempting to limit these rights shall be void and
40 unenforceable. Any rights of a homeowner or obligation of a
41 community operator may be settled by means of a written compromise
42 that is knowingly, intelligently, and voluntarily entered into by a
43 homeowner. A compromise is presumed to be knowing, intelligent,
44 and voluntary only if the homeowner was represented by an attorney

1 in executing the compromise.

2

3 17. a. The Attorney General or the county prosecutor may seek
4 temporary and permanent injunctions for any violation of this act, civil
5 penalties in the amount of \$10,000 per violation, or restitution on
6 behalf of all homeowners or homeowner associations injured by the
7 violation. In any such successful action, the court shall award costs
8 and attorney's fees to the prevailing party.

9 b. The court may award civil penalties in the amount of \$10,000
10 per violation for any violation of an injunction ordered pursuant to
11 subsection a. of this section.

12 c. Whenever a community operator does not have the financial
13 capacity to operate the community or when it is the most effective
14 means of insuring compliance with court orders, the court may order
15 a receiver to operate the community.

16 d. The Attorney General or the county prosecutor may use,
17 whenever deemed within the public interest, all of the respective
18 agency's investigatory powers, including subpoena, investigative
19 demand, and similar investigatory powers.

20

21 18. The Commissioner of Community Affairs shall adopt rules and
22 regulations pursuant to the Administrative Procedure Act," P.L.1968,
23 c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the
24 purposes of this act.

25

26 19. To the extent that the provisions of this act conflict or are
27 inconsistent with the provisions of P.L.1973, c.153, the provisions of
28 this act shall supercede them.

29

30 20. Section 4 of P.L.1973, c. 153 (C.46:8C-4) and section 2 of
31 P.L.1983, c. 399 (C.46:8C-9) are repealed.

32

33 21. This act shall take effect on the first day of the seventh month
34 after enactment.

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36

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STATEMENT

38

39 Mobile home owners in manufactured housing communities are a
40 largely unprotected population. They are in an unequal bargaining
41 position with the housing community owners, owning their homes, but
42 renting the land on which they are placed. These home owners are
43 often victims of unconscionable rent increases, restrictive community
44 policies and unfair business practices.

45 Up to this time, New Jersey, like a majority of states, have
46 addressed only pieces of the problem. This bill, entitled the

1 "Manufactured Home Owner's Bill of Rights" is based on a
2 comprehensive model statute developed by the National Consumer
3 Law Center at the request of the American Association of Retired
4 Persons. It provides potential solutions for some of the most pressing
5 problems faced by manufactured housing community homeowners.

6 The shortage of rental sites combined with the immobility of
7 "mobile" homes (\$10,000 to \$15,000 is an estimated cost to move
8 one) gives housing manufactured community owners extraordinary
9 leverage to maintain their grounds as they desire, exact large increases
10 in rents and other fees and to establish sometimes unreasonable ground
11 rules for everyday living. This bill recognizes that manufactured home
12 owners are not "tenants" who can pack their bags and leave when a
13 dispute arises with a community operator.

14 The bill's core provision is a one to five-year renewable lease
15 requirement that restores some measure of balance in the economic
16 relationship between the community operator and the manufactured
17 home owner. Long term leases are already an acceptable feature of
18 commercial practice when a tenant has a substantial investment in a
19 particular location. Homeowners would have the right to renew their
20 leases at market rates -- at the same levels as those paid by other,
21 newer homeowners in the same community. Coupled with provisions
22 for arbitration and private remedies, the bill would empower
23 homeowners to negotiate key issues of tenancy such as rent and lease
24 terms directly with community owners. The bill permits owners of
25 manufactured homes to form associations for the purpose of
26 protecting the rights of the homeowners in the housing community.

27 The bill further prohibits a host of unfair and deceptive practices
28 and assists homeowners in remedying housing community maintenance
29 problems. Since the State has limited resources for enforcement, the
30 bill also provides for the awarding of attorney's fees to prevailing
31 parties, binding appraisal to determine rent levels, and a variety of
32 statutory and punitive damages to deter violations.

33 This bill should be viewed as the opening, rather than a finale, of a
34 long-term effort to better serve the needs of homeowners in
35 manufactured housing communities.

36

37

38

39

40 The "Manufactured Home Owner's Bill of Rights."