

D R A F T
FOR DISCUSSION ONLY

MANUFACTURED HOUSING ACT

ONE TRACK

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 24-26, 2012 Drafting Committee Meeting

With Prefatory Note and Comments

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By
NATIONAL CONFERENCE OF COMMISSIONERS
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February 13, 2012

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MANUFACTURED HOUSING ACT

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MANUFACTURED HOUSING ACT

Prefatory Note

The act's primary focus is the proper classification of manufactured homes (also commonly called mobile homes) as real property or personal property. The act is intended to modernize the law in this area, bring uniformity and clarity into a chaotic area of state law, increase the supply of affordable housing by making manufactured home financing more available and affordable, and provide manufactured homeowners with many of the same legal protections as owners of site-built homes.

Many states' laws concerning manufactured homes have not kept pace with the changes in them over the last 90 years. Based on manufactured homes' earliest ancestor—the travel trailer—state laws classify most of these homes as personal property, though only one percent of them are moved after being sited on a lot. Three-quarters of manufactured homes are sited on the owner's land, and the average lot size is more than twice the average lot size for site-built homes. HUD construction and installation standards have virtually eliminated the differences in construction quality and safety between manufactured and site-built homes. As a result, the life expectancy of and deterioration rate for manufactured homes are now equivalent to those for site-built homes. Moreover, a manufactured home's appearance can be virtually indistinguishable from that of a site-built home. Today's manufactured home is functionally more equivalent to a site-built home than to a travel trailer, but only 28% of manufactured homes are classified as real property.

In addition to being generally outdated, existing state laws vary tremendously from state to state, which creates substantial inefficiencies in the manufactured home sale and finance markets. Depending on the state, manufactured homes are (1) personal property even after they are attached to the land, (2) real property for all purposes, (3) real property for some purposes and personal property for others, or (4) personal property until they become a fixture or until the completion of statutorily specified procedures for “converting” the home from personal property to real property. Additionally, these state laws often are unclear or incomplete concerning matters such as the conversion procedure, the purposes for which the home is to be treated as real or personal property, and whether state statutes in this area preempt the common law. As a result, manufactured home dealers, owners, and lenders must cope with a complex variety of laws.

Modernizing these laws and creating uniformity among the states is particularly important because manufactured housing is the most significant form of unsubsidized housing in this country for low-income households. As a result, 8% of the United States population—more than twenty-four million people—live in manufactured homes. In some states, the percentage is almost 20%. Perversely, existing state laws frequently cause manufactured home buyers to pay more to purchase and to finance their home than buyers of a site-built home.

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Act.

(1) “Affidavit of affixation” is an instrument in recordable form that includes the following:

(B) the legal description of the manufactured home that is the subject of the affidavit;

(D) if the affiant does not own the land on which the home is or will be affixed,
the landowner's name;

- (i) the affiant owns the home;
- (ii) the home is or will be affixed on the land described in the affidavit;

(iii) the affiant owns the land on which the home is or will be affixed or

owner's permission to affix the home on the land;

(G) the signature of the affiant or the affiant's representative.

(2) “Affixed” means that the towing hitch, wheels, and axles to a manufactured home have been removed and the home has electricity supplied by a utility or by other means. A home

1 is affixed even if the electric supply is stopped subsequently.

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

4 (4) “Legal description of the manufactured home” is the home’s manufacturer, make,
5 model designation, model year, and any serial numbers.

6 (5) “Manufactured home” or “manufactured housing” means a structure, including the
7 plumbing, heating, air-conditioning, and electrical systems contained in the structure, that is
8 transportable in one or more sections and (A) in the traveling mode, is eight body feet or more in
9 width or 40 body feet or more in length; (B) is built on a permanent chassis and is designed to be
10 used as a dwelling with or without a permanent foundation when connected to the required
11 utilities; and (C) is not a self-propelled recreational vehicle.

12 (6) “Person” means an individual, corporation, business trust, estate, trust, partnership,
13 limited liability company, association, joint venture, public corporation, government or
14 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

15 (7) “Record” means information that is inscribed on a tangible medium or that is stored
16 in an electronic or other medium and is retrievable in perceivable form.

17 (8) “Recorder” means the government official that records documents affecting land
18 titles and makes them available for public inspection.

19 (9) “Security interest” means an interest in real property or in personal property that
20 secures payment or performance of an obligation.

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

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

23 (B) to attach to or logically associate with the record an electronic symbol, sound,

1 or process.

2 (11) “State” means a state of the United States, the District of Columbia, Puerto Rico,
3 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
4 of the United States.

5 (12) “Transferee” means a person that acquires title to a manufactured home in any
6 manner, including sale, exchange, gift, or testate or intestate succession.

7 (13) “Transferor” means a person that transfers title to a manufactured home in any
8 manner, including sale, exchange, gift, or testate or intestate succession.

9 **Comment**

10 **Paragraph (1)** specifies the requirements for an affidavit of affixation, which is recorded
11 in the land records when a manufactured home becomes real property pursuant to Sections 3, 4,
12 or 6.

13
14 **Paragraph (2)** identifies when a manufactured home has become sufficiently connected
15 to land and unlikely to be moved that the home becomes real property. In considering
16 alternatives, the drafting committee stressed the need for a standard that is objective, easy to
17 verify, and achievable in all jurisdictions and by all manufactured homeowners. The committee
18 considered and rejected numerous definitions, including the following:

- 19 • permanent affixation to land, which was defined as installation in accordance with the
20 manufacturer’s installation instructions and with applicable federal, state, and local
21 laws. The committee rejected this standard because: (1) it excludes homes that are
22 improperly installed; (2) it requires a determination whether a home has been
23 properly installed; and (3) though unlikely, the home can be moved and, therefore, is
24 not “permanently” affixed;
- 25 • issuance of a certificate of occupancy, because not all jurisdictions require them;
- 26 • government certification of utility connection or of proper home installation, because
27 the certification can take several months to obtain;
- 28 • attachment to a permanent foundation, because the HUD definition of “manufactured
29 home” does not require it and because some states and many landlords do not permit
30 a permanent foundation in a leasehold community; and
- 31 • satisfaction of the fixture test, because it is fact dependent and unpredictable and
32 because some forms of installation that the HUD Code permits do not satisfy that test.

1 Because only 1% of manufactured homes are moved after being sited on land, the
2 drafting committee determined that removal of the towing hitch, wheels, and axles and
3 connection to a source of electricity constitute a sufficient connection to the land and a standard
4 that is objective, readily verifiable, and universally achievable.

5 **Paragraph (3)** is the standard Uniform Law Commission definition of “electronic”.

6 **Paragraph (4)** includes the information that most state statutes require in conveyance
7 documents for manufactured homes. The “serial number” is the vehicle identification number
8 (VIN). Manufactured homes built before June 15, 1976 do not have a serial number.

9 **Paragraph (5)** is based on the “manufactured home” definition in Uniform Commercial
10 Code § 9-102(53). As stated in comment 5(b) to that section, the definition is intended to have
11 the same meaning as the definition in the federal Manufactured Housing Act, 42 U.S.C.
12 § 5402(6). Using this definition will help harmonize this act with the federal act and with the
13 Uniform Commercial Code. However, this act’s definition differs from the Article 9 definition
14 in two ways:

- 15 • Although the Article 9 definition is based on the federal definition, Article 9 omits a
16 clause that the federal definition includes—“and except that such term shall not
17 include any self-propelled recreational vehicle.” Although that exclusion is
18 appropriate for Article 9, it is inappropriate for purposes of this act. Therefore, that
19 clause is in this act’s definition.
- 20 • The federal and Article 9 definitions of “manufactured home” include only homes
21 built on or after June 15, 1976, which was the effective date of HUD’s construction
22 standards for them. This act’s definition also includes homes built before that date,
23 which technically are called “mobile homes”.

24 Some states permit both manufactured and mobile homes to be classified as real
25 property from the time of retail sale. Other states permit only manufactured homes to
26 be so classified. *E.g.*, Colo. Rev. Stat. § 38-29-102(6) (manufactured and mobile
27 homes); Idaho Code Ann. § 39-4105(8) (manufactured homes only); Mont. Code
28 Ann. § 15-1-101(l) (manufactured homes only); N.H. Rev. Stat. Ann. § 674:31
29 (manufactured and mobile homes); N.D. Cent. Code § 39-05-01 (manufactured
30 homes only); Or. Rev. Stat. § 446.561 (manufactured and mobile homes); Tex. Occ.
31 Code Ann. § 1201.003(18) (manufactured and mobile homes).

32
33 This act’s “manufactured home” definition does not require a minimum square footage
34 because neither the federal definition nor the Article 9 definition requires it.

35
36 **Paragraph (6)** is the standard Uniform Law Commission definition of “person”.

37
38 **Paragraph (7)** is the standard Uniform Law Commission definition of “record”.

39
40 **Paragraph (10)** is the standard Uniform Law Commission definition of “sign”.

1 **Paragraph (11)** is the standard Uniform Law Commission definition of “state”.
2

3 **SECTION 3. RETAIL SALE OF MANUFACTURED HOME.**

4 (a) In this section, “retailer” means a person that, in the ordinary course of business, sells
5 manufactured homes to buyers who buy the home for occupancy as a residence.

6 (b) In this section, “manufactured home deed” means a document that satisfies the
7 requirements for a recordable deed and that includes:

- 8 (1) the retailer’s and buyer’s names;
9 (2) the legal description of the home that is the subject of the deed;
10 (3) if the home is new, the home manufacturer’s address;
11 (4) the retailer’s warranties that its title to the home is good, its transfer rightful,
12 and the home is free from any security interest or other lien or encumbrance that is not listed as
13 an exception on the manufactured home deed;
14 (5) the date of the deed;
15 (6) the signature of the retailer or of the retailer’s representative; and
16 (7) as an attachment, (A) the manufacturer’s certificate or statement of origin if
17 the home is new or (B) if the home is not new, the document by which the retailer acquired title
18 to the home and every other document that conveyed title to the home since it was severed from
19 the land on which it was last affixed, if any.

20 (c) A retailer that sells a manufactured home shall transfer title by a manufactured home
21 deed if the home is or will be affixed on land in this state.

22 (d) The buyer of a manufactured home that is subject to this section shall record an
23 affidavit of affixation, together with the manufactured home deed, in the land records of the
24 [county, municipality, or other recording jurisdiction] in which the home is or will be affixed.

1 (e) The sale of a manufactured home that is subject to this section also is subject to [state
2 version of Uniform Commercial Code, Article 2]; except that the retailer cannot disclaim the
3 warranties provided in subsection (b)(4).

4 [(f) If the purchase of a manufactured home that is subject to this section is financed in
5 whole or in part with a loan that is secured by the home, the security interest in the home must be
6 conveyed by a (mortgage) (deed of trust) (mortgage or deed of trust). If the home is financed as
7 a chattel, the lender shall be subject to all the remedies and penalties available to a consumer and
8 the attorney general under (state consumer protection statute).]

9 **Comment**

10 *When Manufactured Home's Property Classification Changes*

11 While a manufactured home is part of a dealer's inventory, the home is personal property.
12 When the retailer sells the home to a buyer that affixes it on land, the home becomes real
13 property pursuant to Section 8(b). "Affixed" is defined in Section 2(2). If the home is
14 subsequently severed from the land, it again becomes personal property. If it is later reaffixed on
15 land, it again becomes real property. Section 5 of this act deals with severance, and Section 6
16 deals with reaffixation.

17 *Chain of Title to Manufactured Home*

18 In approximately forty-two states, title to a manufactured home is evidenced by a
19 certificate of title that a department of motor vehicles or other government agency issues. In
20 those states that permit a manufactured home to be converted to real property, the owner must go
21 through a cumbersome title conversion process. Thereafter, documents affecting title to the
22 home are recorded in the land records, rather than with the government agency that maintains the
23 manufactured home records. If a statutory title conversion process is unavailable, the owner
24 must establish that the home has become a fixture.

25 To eliminate the necessity for the issuance of a certificate of title and for a title
26 conversion process and to establish a single chain of ownership for a manufactured home that is
27 affixed on land, **subsection (c)** requires the retailer to transfer title by a manufactured home deed
28 in recordable form. Under Section 8(d), all future conveyances of a right, title, or interest in the
29 home while it remains real property must be made in accordance with the real property laws. For
30 example, a deed is used to convey title, and a mortgage or deed of trust is used to create a
31 security interest. If the home is severed, Section 5 requires the owner to record an affidavit of
32 severance in the land records of the jurisdiction from which the home is being moved. If the
33 owner subsequently reaffixes the home on land, Section 6 requires the owner to record an
34 affidavit of affixation in the land records of the jurisdiction in which the home is reaffixed. This

1 affidavit must include the recording information for the deed or affidavit of affixation for the
2 home's previous location.

3 *Applicability of Article Two of Uniform Commercial Code*

4 Substantial authority exists that Article Two of the Uniform Commercial Code governs
5 the sale of a manufactured home, though it will be affixed on land before the sale is
6 consummated. *E.g.*, *Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece*
7 *v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*,
8 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v.*
9 *Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*,
10 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711
11 (Tex. App. 1974). However, these opinions do not specify whether relevant state law classified
12 the home as real property after it was affixed on land but before consummation of the sale.
13 Therefore, **subsection (e)** is intended to eliminate any question concerning the applicability of
14 Article 2 to retail sales of manufactured homes after [day before act's effective date]. The only
15 exception is that the transferor cannot disclaim the warranties provided in subsection (b)(4),
16 though Article 2 permits disclaimer.

17 *Manufactured Home Financed as Real Property*

18 A primary goal of this uniform act is to increase the affordability and availability of
19 financing for manufactured homes. Currently, most loans for manufactured homes are chattel
20 loans, though the interest rates on real property loans for manufactured homes are substantially
21 lower. Moreover, the term of a real property loan normally is significantly longer than for a
22 chattel loan. The combination of a lower interest rate and longer term causes the monthly
23 payments on a real property loan to be substantially less than on a chattel loan.

24 The less favorable terms for manufactured home chattel loans are attributable in part to a
25 relative lack of availability and, therefore, a relative lack of competition. Far fewer lenders make
26 manufactured home chattel loans than make real property loans on those homes. Additionally,
27 many home buyers are steered by the retailer to a chattel lender.

28 The absence of a secondary market for chattel loans on manufactured homes also
29 substantially hinders credit availability. Although Fannie Mae purchases manufactured home
30 loans, its purchase program is limited to loans secured by manufactured homes that are classified
31 as real property. By characterizing all manufactured homes as real property, Fannie Mae's
32 purchase program could greatly expand, thereby increasing capital and decreasing interest rates.
33 Moreover, Fannie Mae has stated that it will standardize underwriting, valuation, and
34 documentation for manufactured home real property loans, which will facilitate the secondary
35 market in the same ways as for the secondary market for site-built home loans.

36 Therefore, to increase credit affordability and availability, **subsection (f)** provides that, if
37 a manufactured home purchase is financed with a loan secured by the home, the security interest
38 in the home must be conveyed by a mortgage or deed of trust. The alternative language is
39 included in subsection (f) because states differ on whether only mortgages, only deeds of trust, or
40 both can be used to secure real property loans.

1 *Representative State Laws Permitting Real Property Classification at Time of Retail Sale*

2 Colo. Rev. Stat. § 38-29-114(2) (new manufactured home becomes real property when
3 certificate of permanent location recorded in land records); Idaho Code Ann. § 63-304 & Idaho
4 Admin. Code r. 35.01.03.304 (new manufactured home becomes real property when buyer
5 records “statement of intent to declare the manufactured home as real property” with the county
6 recorder and provides tax assessor with copy of recorded statement of intent); Mont. Code Ann.
7 § 15-1-116 (new manufactured home becomes real property when “Statement of Intent to
8 Declare a Manufactured Home an Improvement to Real Property” is recorded in land records);
9 N.D. Cent. Code §§ 39-05-35(1)(c) & 47-10-27(6) (new manufactured home becomes real
10 property when affidavit of affixation recorded in land records and copy of recorded affidavit of
11 affixation and application for surrender of title filed with Department of Transportation); Or.
12 Rev. Stat. § 446.626 (new manufactured home becomes real property when “Application and
13 Certification Exempting a Manufactured Structure from Ownership Document” filed with county
14 assessor and county assessor records application in deed records); Tex. Occ. Code Ann. §
15 1201.2055 (new manufactured home becomes real property when (1) “Statement of Ownership
16 and Location” (SOL) filed with Department of Housing & Community Affairs (“Department”),
17 (2) Department mails certified copy of SOL to owner and each lienholder, (3) owner files
18 certified copy of SOL in land records and notifies Department and tax assessor-collector that
19 copy has been filed, and (4) Department and tax assessor-collector note in their records that real
20 property election has been made).

21 **SECTION 4. MANUFACTURED HOME FOR WHICH NO AFFIDAVIT OF**
22 **AFFIXATION HAS BEEN RECORDED IN THIS STATE.**

23 (a) If a manufactured home is affixed on land in this state for which an affidavit of
24 affixation has not been recorded under Section 3, the homeowner may file an affidavit of
25 affixation for recording in the land records of the [county, municipality, or other recording
26 jurisdiction] in which the home is affixed. The affidavit must include:

27 (1) the name of the person from which the owner acquired the home;
28 (2) the date that the owner acquired the home;
29 (3) a description of any tenancy or security interest or other encumbrance on the
30 title to the home; and

31 (4) as an attachment to the affidavit, the manufacturer’s certificate or statement of
32 origin, the certificate of title that evidences the owner’s ownership of the home, or the original
33 deed or certified copy of the deed by which the owner acquired title to the home.

(b) If a manufactured home is moved from another state to a parcel of land in this state to be affixed, the homeowner shall file an affidavit of affixation in the form and in the place provided in subsection (a). The owner must file the affidavit not later than ten days after the home is affixed in this state.

Legislative Note: *If the state uses electronic certificates of title, it will be necessary to provide a method for obtaining a certified copy to attach to the affidavit of affixation.*

Comment

Subsection (a) applies to a manufactured home acquired before the act's effective date and to new homes acquired after the act's effective date but not for immediate affixation. It provides the method to convert the home to real property. *Accord* Or. Rev. Stat. § 446.626(1); Tex. Occ. Code § 1201.214. *Compare* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-118 (homeowner *must* file certificate of permanent location to reclassify home as real property when home is permanently affixed to land even if owner purchased before law's effective date).

Subsection (b) applies to a manufactured home moved to this state from another state. It requires the homeowner to convert the home to real property.

"Affixed" is defined in Section 2(2).

SECTION 5. SEVERANCE OF MANUFACTURED HOME.

(a) Not later than ten days after a manufactured home is severed and moved from a location for which an affidavit of affixation has been filed for recording, the homeowner shall file an affidavit of severance for recording in the land records in which the affidavit was recorded. The affidavit must include the following:

(1) the homeowner's name;

(2) the legal description of the home;

(3) a legally sufficient description of the land from which the home is or will be severed;

(4) if the homeowner does not own the land from which the home is or will be severed, the landowner's name;

- 1 (5) a statement that the home has been or will be moved;
- 2 (6) the date that the home has been or will be moved;
- 3 (7) a legally sufficient description of the land to which the home has been or will
- 4 be moved;
- 5 (8) if the owner of the home at the new location is different than the owner at the
- 6 location from which the home has been or will be severed, the name of the new owner;
- 7 (9) the recording information for the most recent deed or affidavit of affixation
- 8 for the home; and
- 9 (10) the signature of the homeowner or the homeowner's representative.

10 (b) A homeowner may not sever the manufactured home unless the holder of every

11 security interest or other encumbrance on the home consents.

12 (c) If a manufactured home for which an affidavit of affixation has been filed for

13 recording is on land that the homeowner does not own, the landowner shall file an affidavit of

14 severance, together with a certified copy of any required judgment or order authorizing the

15 landowner to sever the home as an attachment to the affidavit, for recording in the same land

16 records. The landowner, rather than the homeowner, shall sign the affidavit of severance. The

17 landowner shall file the affidavit not later than ten days after severing the home. The landowner

18 need not obtain the consent of the holder of a security interest or other encumbrance on the

19 home.

20 **Comment**

21 **Subsections (a) & (b)** deal with a homeowner's severance of its manufactured home.

22 Before severing the home, the owner must obtain the consent of every holder of a security

23 interest or other encumbrance on the home. Not later than ten days after the home is severed and

24 moved, the owner must file an affidavit of severance for recording in the land records in which

25 the affidavit of affixation was recorded.

26 If an encumbrance on the title to a home is not released before it is severed, some courts

1 have held that the encumbrance is unimpaired. *Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897);
2 *Partridge v. Hemenway*, 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866);
3 *Mills v. Pope*, 4 P.2d 485 (1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan &*
4 *Trust Co. v. Parmalee*, 58 N.W. 811 (S.D. 1894) (all involving site-built homes). See
5 RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 4.6, Reporters' Note cmt. B. In a few
6 other cases, the court has held that a secured lender loses its security interest in the home but has
7 an action for waste or for impairment of security. *Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v.*
8 *Beck*, 296 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78
9 Ky. 568 (1880) (all involving site-built homes).

10 To maintain a chain of ownership in the land records when a manufactured home is
11 severed and moved, **subsection (a)(7)** provides that the affidavit of severance must include a
12 legal description of the land to which the home is being moved. Additionally, if ownership of
13 the home will change when the home is severed, **subsection (a)(8)** provides that the affidavit
14 must include the new owner's name.

15 **Subsection (c)** deals with a landowner's severance from its land of a home that it does
16 not own. For example, subsection (c) applies when a landowner leases the land to a
17 manufactured homeowner that fails to remove the home when the land lease terminates.

18 *Representative State Statutes*

19 The following descriptions of some representative state statutes provide an overview of
20 the different methods for addressing the issue of home severance.

21 *Colorado* requires the homeowner to file a certificate of removal with the county clerk
22 and recorder for the county where the home is located. Colo. Rev. Stat. § 38-29-203(1)(a) & (b).
23 Within twenty days after the location change, the owner must file a notice of the change with the
24 county assessor and the county treasurer for the counties from which and to which the home has
25 been moved. § 38-29-143. A landlord that is evicting a tenant can record a certificate of
26 removal. § 38-29-203(2.5)(b). All lienholders must consent to the removal. If a lienholder does
27 not consent, the homeowner can file a bond in an amount equal to 150% of the secured amount.
28 Colo. Rev. Stat. § 38-29-203(4).

29 *Connecticut* requires a manufactured homeowner to file a statutorily-specified "Mobile
30 Manufactured Home Removal Statement" for recording in the land records of the jurisdiction
31 from which the home is being moved at least 72 hours before the move. The form describes the
32 home's current location and the location to which it is being moved. It also requires the written
33 consent of each security interest holder "subject to the condition that the . . . security
34 interest/mortgage/lien/attachment shall remain in full force and effect." Conn. Gen. Stat. § 21-
35 67a(f).

36 In *Idaho*, at least thirty days before a manufactured home relocation, the owner must give
37 the county assessor for the county where the home is located (1) A "Reversal of Declaration of
38 Manufactured Home as Real Property", (2) a copy of a title report from a title insurance
39 company that identifies all owners of an interest in the land to which the home is affixed and the
40 written consent of each owner, other than the owner of a right-of-way, easement, or subsurface

1 right, and (3) an application for a title to the home. The reversal declaration must be recorded
2 and a certificate of title must be issued before the owner moves the home. Idaho Code § 63-305;
3 Idaho Admin. Code r. 35.01.03.304.02 & .04.

4 *Montana* requires the owner to file a statement of reversal of declaration with the county
5 clerk and recorder of the county in which the home is located. All lienholders must consent to
6 the reversal. The clerk and recorder must forward a copy of the statement to the Department of
7 Justice (“Department”; entity responsible for titling manufactured homes). The Department must
8 give the owner a restored certificate of origin or certificate of title. After receiving the fee for a
9 new certificate of title, the county treasurer must forward the statement of reversal of declaration
10 to the Department. The Department then must give the owner a statement in recordable form
11 that the process of converting the home has been completed. The owner then must record the
12 statement. Mont. Code § 15-1-118.

13 *New Hampshire* requires an owner that is relocating a home within the state to record a
14 deed evidencing the change of location in the land records of the counties from which and to
15 which the home is moved. If the home is moved outside the state, the owner must record a
16 statutorily-prescribed relocation statement in the land records of the county from which the home
17 is moved. The home cannot be moved out of state unless all lienors give written consent on the
18 transfer statement. If the home is on leased land, the landowner’s written consent also is
19 required whether the owner is relocating the home inside or outside the state, because the
20 landowner has a right to a lien for any unpaid rent. The consent requirement alerts the
21 landowner to file a lien before the home is moved to another jurisdiction. N.H. Rev. Stat.
22 § 477:44, subp. II.

23 In *Oregon*, a manufactured home that is classified as real property cannot be moved
24 unless the Department of Consumer and Business Services, the agency that titles manufactured
25 homes, approves the move and the county assessor issues a “trip permit”. The department
26 cannot approve an application to move a home to another county unless all taxes and special
27 assessments have been paid. If the department approves the move, it must issue an ownership
28 document and must deliver it to the holder of the most senior security interest in the home or, if
29 none, to the owner. The department also must send a copy of the ownership document to any
30 other security interest holder and to the county assessor for the county to which the home is to be
31 moved. Or. Rev. Stat. § 446.631.

32 **SECTION 6. RELOCATION OF MANUFACTURED HOME.** If a manufactured
33 home, for which an affidavit of affixation has been filed for recording in this state, is moved and
34 affixed on another parcel of land in this state, the following rules apply:

35 (a) Not later than ten days after the home is affixed, the homeowner shall file an affidavit
36 of affixation for recording in the land records of the [county, municipality, or other recording
37 jurisdiction] in which the home is affixed. The affidavit must include the recording information

1 for the most recent deed or affidavit of affixation for the home at its previous location.

2 (b) If the owner of the home when it is affixed at the new location is different than the
3 owner when the home was severed from the former location, each document that conveyed title
4 to the home since it was last affixed must be recorded as an attachment to the affidavit of
5 affixation.

6 **Legislative Note:** *If the state uses electronic certificates of title, it will be necessary to provide a*
7 *method for obtaining a certified copy to attach to the affidavit of affixation.*

8 9 **Comment**

10 This section deals with intrastate manufactured home relocations. Section 4(b) deals with
11 interstate home relocations. If the home is being moved in connection with a retail sale, Section
12 3 applies.

13 This section is designed to maintain a single record chain of title for manufactured homes
14 that are subject to this act. The chain begins with the recording of a deed and affidavit of
15 affixation in the land records pursuant to Section 3 or of an affidavit of annexation pursuant to
16 Section 4 and continues with the recording of any deeds subsequently given to transfer title to the
17 home. If the home is moved from the land on which it was originally affixed, Section 5 requires
18 the homeowner to record an affidavit of severance in that location. The affidavit of severance
19 must identify the land to which the home is being moved and the name of the new owner, if any.
20 When the home is reaffixed, this section requires the owner to record an affidavit of affixation in
21 the new location that includes the recording information for the most recent deed or affidavit of
22 affixation at the former location.

23 When the home is severed, it becomes personal property unless and until it is reaffixed on
24 land. As personal property, title will not be transferred by a deed. Therefore, to maintain an
25 unbroken chain of title in the land records, subsection (b) provides that each document that
26 conveyed title to the home while it was personal property must be recorded as an attachment to
27 the affidavit of affixation. Maintaining a single chain of title when the home is severed and
28 reaffixed eliminates the time and expense of creating a new chain of title when the home is
29 severed with the government agency that currently maintains title records for manufactured
30 homes and another new chain in the land records when the home is reaffixed.

31 *Representative State Statutes*

32 The following descriptions of representative state statutes provide an overview of the
33 different methods for addressing the issue of home relocation.

34 Within twenty days after relocation, *Colorado* requires the homeowner to file a notice of
35 relocation with the county assessor and the county treasurer for the counties from which and to
36 which the home has been moved. Colo. Rev. Stat. § 38-29-143. When the home is permanently
37 affixed at the new location, the owner must file a certificate of permanent location. § 38-29-118.

1 *New Hampshire* requires an owner that is relocating a home within the state to record a
2 deed evidencing the change of location in the land records of the counties from which and to
3 which the home is moved. N.H. Rev. Stat. Ann. § 477:44, subp. II.

4 *Texas* requires the owner that relocates to apply for a new Statement of Ownership and
5 Location (“SOL”) within sixty days after the relocation, Tex. Occ. Code § 1201.206(f), though
6 the change location form states that it must be recorded within thirty days after relocation. The
7 owner must submit a copy of the Texas DOT moving permit with the SOL application. 10 Tex.
8 Admin. Code SOL Application Instructions 4.

9 **SECTION 7. RECORDING.**

10 (a) When a deed to a manufactured home, an affidavit of affixation, or an affidavit of
11 severance is filed, the recorder shall record and index it, together with any attachments. If a
12 manufacturer’s certificate or statement of origin or a certificate of title was filed as an attachment
13 to the deed or affidavit of affixation, the recorder shall stamp or make a notation on it that it is no
14 longer valid.

15 (b) The recorder shall deliver the recorded deed or affidavit of affixation to the
16 homeowner. The [recorder shall deliver a copy of the deed or affidavit] [homeowner shall
17 deliver a copy of the recorded deed or affidavit] to the property tax assessor for the jurisdiction
18 in which the home is located. If a manufacturer’s certificate or statement of origin or certificate
19 of title is filed with the deed or affidavit, the [recorder also shall deliver a copy of the deed or
20 affidavit] [homeowner also shall deliver a copy of the recorded deed or affidavit] to the
21 [government agency that maintains manufactured home title records].

22 (c) The recorder shall deliver the recorded affidavit of severance to the person that filed
23 it. When the affidavit is [filed, the recorder] [recorded and delivered, the person to which it is
24 delivered] shall deliver a copy of it to the property tax assessor for the jurisdiction from which
25 the home was severed.

26 **Comment**

27 In many states that permit a manufactured home to be classified as real property, the

1 necessary documents must be filed initially with the agency that maintains the manufactured
2 home title records or with the property tax assessor. This type of process is cumbersome and can
3 prevent the home's title from appearing in the land records until several weeks after the filing.
4 For example, in Texas, a manufactured home retailer that sells a home has 60 days after the sale
5 to file an application for a Statement of Ownership and Location ("SOL") and the original
6 manufacturer's certificate or statement of origin with the Manufactured Housing Division of the
7 Texas Department of Housing & Community Affairs ("Department"). The Department then has
8 15 days to issue the SOL and send it to the homeowner. After receiving the SOL, the owner has
9 60 days to file a certified copy of the SOL in the real property records of the county where the
10 home is located and to notify the Department and the tax assessor-collector that the copy has
11 been filed for record. Tex. Occ. Code §§ 1201.206, 1201.207, 1201.2055(d). The Oregon
12 procedure is similarly complicated and slow. Or. Rev. Stat. § 446.626(2) (application to classify
13 manufactured home as real property and any ownership document filed with county assessor;
14 application then recorded in deed records; assessor then sends ownership document to agency
15 that titles manufactured homes; agency cancels ownership document and sends cancellation
16 confirmation to assessor and to owner). *See also* Or. Admin. R. 918-550-0160 (tax assessor).

17 In contrast, this section requires the deed and affidavit of affixation to be filed first with
18 the recorder. *Accord* Colo. Rev. Stat. § 38-29-114(2); Mont. Code § 15-1-116(1); N.H. Rev.
19 Stat. §477:44, subp. III. When the home buyer finances the purchase, the lender or title insurer
20 normally will file the deed and affidavit for recording. When the buyer does not finance the
21 purchase, the manufactured home retailer, like a car dealer, can offer to file the deed and
22 affidavit for recording, or the buyer can file them. In this way, the home immediately is brought
23 into the real property title system.

24 The possibility that a manufactured home transferor will fraudulently transfer title to the
25 home more than once is a significant practical concern. This wrongful practice is facilitated if
26 the transferor retains the manufacturer's certificate or statement of origin or certificate of title, if
27 any. Therefore, **subsection (a)** requires delivery of these documents to the recorder when the
28 deed and affidavit are filed and requires the recorder to mark them as being no longer valid. This
29 section is based on Colo. Rev. Stat. §§ 38-29-202(1)(c), 38-29-207.

30 Requiring the recorder, rather than the homeowner, to deliver a copy of the deed and
31 affidavit of affixation to the tax assessor and to the titling agency, if any, is more likely to ensure
32 that delivery occurs. The homeowner may be unaware of the delivery requirement or may fail to
33 deliver in an attempt to avoid paying real property taxes. However, some jurisdictions prohibit
34 the recorder from delivering documents. Therefore, **subsection (b)** includes alternative language
35 that requires the owner to do so. Similarly, **subsection (c)** provides alternative language for an
36 affidavit of severance.

37 **SECTION 8. RIGHT, TITLE, AND INTEREST IN MANUFACTURED HOME.**

38 (a) When a manufactured home sale is subject to Section 3 and the buyer is a buyer in
39 ordinary course of business, the buyer takes free of a security interest created by the buyer's
40 seller pursuant to [state version of Uniform Commercial Code, Article 9], even if the security

1 interest is perfected and the buyer knows of its existence. The buyer is a “buyer in ordinary
2 course of business” if it buys the home in good faith, without knowledge that the sale violates the
3 rights of another person in the home, and in the ordinary course from a person in the business of
4 selling manufactured homes. A person buys a manufactured home in the ordinary course if the
5 sale comports with the usual or customary practices in manufactured home retail sales or with
6 the seller’s own usual or customary practices. A buyer in ordinary course of business may buy
7 for cash, by exchange of other property, or on secured or unsecured credit, and may acquire a
8 home under a preexisting contract for sale. Only a buyer that takes possession of the home or
9 has a right to recover the home from the seller under [state version of Uniform Commercial
10 Code, Article 2] may be a buyer in ordinary course of business. A person that acquires homes in
11 a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a
12 buyer in ordinary course of business.

13 (b) A manufactured home that is subject to the provisions of Section 3 or Section 6
14 becomes real property for all purposes when it is affixed on land. A home that is subject to the
15 provisions of Section 4 becomes real property for all purposes when the affidavit of affixation is
16 filed for recording in the appropriate land records. The home is real property even if the affidavit
17 of affixation and the document by which the owner of the home acquired title to it do not satisfy
18 all the requirements of this [act]; but, to be valid, both documents must include the legal
19 description of the home and a legally sufficient description of the land on which it is or will be
20 affixed.

21 (c) When a manufactured home is affixed on land, title to the home remains separate
22 from the title to the land. The home is not subject to any security interest or other encumbrance
23 in or on the title to the land, and the land is not subject to any security interest or other

1 encumbrance in or on the title to the home.

2 (d) Each transfer of a right, title, or interest in a manufactured home that is classified as
3 real property must be made in accordance with applicable real property law and must include the
4 legal description of the home and a legally sufficient description of the land on which the home
5 is or will be affixed.

6 (e) If a manufactured home that has become real property is severed from the land on
7 which it is affixed, the home becomes personal property [but does not require a certificate of
8 title]. After becoming personal property, each transfer of a right, title, or interest in the home
9 must be made in accordance with applicable personal property law until the home again becomes
10 real property. Each transfer of a right, title, or interest in the home while it is personal property
11 must include the legal description of the home.

12 (f) If the law of this state governs the perfection of a tenancy, security interest, or other
13 encumbrance on a manufactured home while it is personal property or real property and if the
14 encumbrance was [filed in the proper place in this state] [noted on the certificate of title for the
15 home], it remains effective, retains the time and date of its priority, and provides the same rights
16 and remedies, though the home's classification as personal or real property or its location within
17 this state, whichever controlled the original [filing] [notation], is thereafter changed one or more
18 times.

19 (g) After a manufactured home is moved into this state and the owner files an affidavit of
20 affixation as provided in Section 4(b), subsequent purchasers for value of an interest in the home,
21 including a security interest, acquire that interest free and clear of any tenancy, security interest,
22 or other encumbrance that is not filed in the proper place in this state, unless:

23 (1) the subsequent purchaser has actual notice of the tenancy, security interest, or

1 other encumbrance;

2 (2) the recorded affidavit of affixation describes the tenancy, security interest, or
3 other encumbrance; or

4 (3) the tenancy, security interest, or other encumbrance is filed in the proper
5 place in this state within four months after the earlier of the filing of the affidavit of affixation or
6 affixation of the home.

7 **Comment**

8 **Subsection (a)** describes the circumstances under which a buyer from a manufactured
9 home dealer acquires title free of an Article 9 security interest that the dealer granted.
10 Subsection (a) is based on U.C.C. §§ 1-201 & 9-320(a). If the manufactured home will not be
11 affixed when purchased and, therefore, will remain personal property, these U.C.C. provisions
12 concerning a buyer in ordinary course of business will apply, rather than subsection (a) of this
13 [act].

14 **Subsection (b)** provides that, when a home is classified as real property, it is real
15 property for all purposes. *Accord* Colo. Rev. Stat. §§ 38-29-112(1.5), 38-29-114(2); Mont. Code
16 § 15-1-116(5); Or. Rev. Stat. § 446.626(2) & (5). This provision eliminates the ambiguity that
17 currently exists in some state statutes concerning the purposes for which the home is to be treated
18 as real property. When a statutory provision that a manufactured home can be classified as real
19 property does not include this type of language, courts have questioned whether the home is
20 classified as real property only for certain purposes, such as financing, or for all purposes.

21 Pursuant to subsection (b), a manufactured home becomes real property though the
22 homeowner does not own the land on which the home is affixed. Many state statutes permit a
23 manufactured home on leased land to be real property. *E.g.*, Cal. Health & Safety Code §
24 18551(a)(1)(A); Colo. Rev. Stat. § 38-29-202(1)(d); Conn. Gen. Stat. § 21-67a; Fla. Stat. §
25 319.261; Idaho Code § 63-304(1)(b); N.H. Rev. Stat. § 477:44, subp. I; Or. Rev. Stat. §
26 446.626(1); S.C. Code § 56-19-510; Tex. Occ. Code § 1201.2055. However, other states do not
27 permit a home to be real property if it is on leased land. *E.g.*, Ala. Code § 32-8-30; Ariz. Rev.
28 Stat. § 42-15201(2); Ga. Code § 8-2-181(b)(1); Mich. Comp. Laws § 125.2330i; Miss. Code § 27-
29 53-15; Vt. Stat. tit. 9, § 2603(b). This restriction prevents about one-quarter of manufactured
30 homes from being converted to real property.

31 Under **subsection (c)**, the title to a manufactured home remains separate from the title to
32 the land on which it is affixed whether the homeowner leases or owns the land. If the
33 homeowner leases the land, the landowner acquires no interest in the home solely by virtue of its
34 affixation. However, the landowner can obtain a lien on the home for any unpaid rent, for
35 example, to the extent that state law permits.

36 If the homeowner also owns the land, the home and land titles still remain separate after

1 the home is affixed. National organizations that represent consumers, including manufactured
2 homeowners, have stated that keeping the titles separate is important because it enables a
3 landowner to purchase a manufactured home with a loan that is secured by just the home. In this
4 way, if the purchaser defaults on the loan, it will lose the home but not the land. Of course, a
5 lender can refuse to make the loan without also getting a security interest in the land.

6 **Subsection (f)** deals with interests in a manufactured home that existed before the
7 home's legal classification as real or personal property changed or the home was moved
8 intrastate. This subsection provides that a properly perfected interest will continue to encumber
9 the title to the home and will retain its priority, thereby eliminating the need for the interest
10 holder to take any further action to retain its interest or priority. This provision is based on
11 U.C.C. § 9-501(a) and on its predecessor, § 9-401(3).

12 Subsection (f) also provides that the rights and remedies available to the interest holder
13 and to the homeowner will not change. For example, if a creditor acquired a security interest in a
14 manufactured home while it was personal property, the creditor will retain the same rights and
15 remedies though the home has become real property. Conversely, if a secured creditor holds a
16 mortgage or deed of trust on the home and the home becomes personal property by means of
17 severance, the mortgage continues to encumber the home, and the mortgagee's remedy is
18 foreclosure. *Accord Johnson v. Bratton*, 70 N.W. 1021 (Mich. 1897); *Partridge v. Hemenway*,
19 50 N.W. 1084 (Mich. 1891); *Hamlin v. Parsons*, 12 Minn. 108 (1866); *Mills v. Pope*, 4 P.2d 485
20 (Mt. 1931); *Turner v. Mebane*, 14 S.E. 974 (N.C. 1892); *Dakota Loan & Trust Co. v. Parmalee*,
21 58 N.W. 811 (S.D. 1894). *Contra Bockout v. Swift*, 27 Cal. 433 (1865); *Walch v. Beck*, 296
22 N.W. 780 (Iowa 1941); *Clark v. Reyburn*, 1 Kan. 281 (1863); *Harris v. Bannon*, 78 Ky. 568
23 (1880).

24 **Subsection (g)** concerns manufactured homes brought into this state from another state.
25 It is based on Colo. Rev. Stat. § 38-29-127 and on U.C.C. § 9-316.

26 **SECTION 9. PREEMPTION OF COMMON LAW.** This act preempts the common
27 law, including the law of fixtures. When a manufactured home becomes real property by the
28 terms of this [act], it is not a fixture and is not subject to the law of fixtures.

29 **Comment**

30 This section has two purposes: (1) to make clear that this act preempts the common law
31 in this area and (2) to create parity between site-built homes and manufactured homes. Because
32 a manufactured home is personal property before it is affixed on land, a court may treat the home
33 as a fixture, which is a type of real property. As a fixture, different financing and creditor
34 remedies are available than for a site-built home. Therefore, this subsection expressly provides
35 that the home is not a fixture.

36 **SECTION 10. TAXATION OF MANUFACTURED HOME.** To be determined.

SECTION 11. HOME WARRANTIES. A warranty that applies to a manufactured home while it is personal property continues to apply when the home becomes real property under this [act].

Comment

This section is based on Tex. Occ. Code § 1201.2055(h). It is designed to preserve personal property warranties for a manufactured home after it has been converted to real property. For example, as described in the comment to Section 3, substantial authority exists that Article Two of the Uniform Commercial Code applies to the sale of a manufactured home, though it will be affixed to land before the sale is consummated. *E.g., Joswick v. Chesapeake Mobile Homes, Inc.*, 765 A.2d 90 (Md. 2001); *Reece v. Homette Corp.*, 429 S.E.2d 768 (N.C. Ct. App. 1993); *Osburn v. Bendix Home Systems, Inc.*, 613 P.2d 445 (Okla. 1980); *Duffee v. Judson*, 380 A.2d 843 (Pa. Super. Ct. 1977); *Long v. Quality Mobile Home Brokers, Inc.*, 248 S.E.2d 311 (S.C. 1978); *Paskell v. Nobility Homes, Inc.*, 871 S.W.2d 481 (Tenn. 1994); *Apeco Corp. v. Bishop Mobile Homes, Inc.*, 506 S.W.2d 711 (Tex. App. 1974). However, none of these opinions specifies whether relevant state law classified the home as real property after it was affixed on land but before consummation of the sale. Therefore, this section is intended to eliminate any question concerning the applicability to manufactured homes of the warranties contained in Article Two and in other laws and to preserve the warranties after the home has become real property.

SECTION 12. PRIVATE CAUSE OF ACTION. A person injured by another person's failure to comply with the terms of this [act] may bring an action for damages and for other relief to enforce a right granted or obligation imposed by this [act]. The court may award reasonable attorney's fees and costs to the prevailing party. This section does not provide the injured person's exclusive remedy.

Comment

This section is based on Uniform Common Interest Ownership Act § 4-117 (2008). The last sentence is intended to make clear that an injured party can enforce other causes of action that it may have, such as an action on a promissory note or mortgage.

SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

1 **Comment**

2 Uniform Law Commission Drafting Rule 601 (2006) requires inclusion of this provision
3 to foster uniformity after the act's enactment.

4 **SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
5 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
6 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but
7 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
8 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
9 U.S.C. Section 7003(b).

10 **Comment**

11 In 2000, Congress enacted the “Electronic Signatures in Global and National Commerce
12 Act,” 106 PUB. L. NO. 229, 114 Stat. 464, 15 U.S.C. § 7001, *et seq.* (popularly known as “E-
13 Sign”). E-Sign largely tracks the Uniform Electronic Transactions Act (UETA). Section 102 of
14 E-Sign, entitled “Exemption to preemption”, provides in pertinent part that:

15 (a) A State statute, regulation, or other rule of law may modify, limit, or
16 supersede the provisions of section 101 with respect to State law only if such statute,
17 regulation, or rule of law—

18 (1) constitutes an enactment of adoption of the Uniform Electronic
19 Transactions Act as approved and recommended for enactment in all the States by the
20 National Conference of Commissioners on Uniform State Laws in 1999” [with
21 certain exception] or

22 (2) (A) specifies the alternative procedures or requirements for the
23 use or acceptance (or both) of electronic records or electronic signatures to establish
24 the legal effect, validity, or enforceability of contracts or other records, if [they meet
25 certain criteria] and

26 (B) if enacted or adopted after the date of the enactment of this
27 Act, makes specific reference to this Act.

28 15 U.S.C. § 7002(a). The inclusion of this section is necessary to comply with the requirement
29 that the act “make[] specific reference to this Act” pursuant to 15 U.S.C. § 7002(a)(2)(B) if the
30 act contains a provision authorizing electronic records or signatures in place of writings or
31 written signatures.

32 **SECTION 15. SAVINGS PROVISION.** Subject to Section 8(g) of this [act],
33 transactions, certificates of title, records, and information that were validly entered into or

1 created before the effective date of this [act], and would be subject to this [act] if they had been
2 entered into or created on or after the effective date of this [act], and the rights, duties, and
3 interests flowing from these transactions, certificates of title, records, and information, remain
4 valid after the effective date of this [act].

5 **Comment**

6 This section is taken from Uniform Law Commission Drafting Rule 603. It is designed
7 to minimize the disruptions inherent in changes from old laws to new laws. It preserves laws
8 that the act supersedes and that otherwise would apply to transactions and events that occurred
9 before the act's effective date.

10 **SECTION 16. REPEALS.** The following are repealed:

11 ***Legislative Note:** This section is for states that wish to replace their existing statutes*
12 *concerning: (1) classification of manufactured homes as real property or as personal property,*
13 *(2) titling of manufactured homes, (3) creation and perfection of security interests in*
14 *manufactured homes and creditor remedies, and (4) manufactured home taxation. After*
15 *enactment of this act, some manufactured homes in the state will remain personal property, such*
16 *as homes that consumers purchased before the act's effective date. Therefore, rather than*
17 *repealing statutes in their entirety, modifying them to reflect the new law and its effective date*
18 *normally would be a better practice.*

19 20 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect on