

BILL ANALYSIS

C.S.H.B. 1009
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Since legislation affecting the manufactured housing industry passed during the 77th legislative session, sales of manufactured homes have decreased dramatically and numerous manufacturing facilities throughout the state have closed. Manufactured housing represents an affordable alternative to site-built homes and is the only unsubsidized alternative housing available in Texas. One of the provisions of the recently enacted legislation virtually eliminated the ability of consumers to finance the acquisition of a manufactured home using a chattel loan, which had the effect of limiting the options for consumers to finance their new homes. A chattel loan is a transaction which creates a security interest in personal property, rather than real property.

C.S.H.B. 1009 restores the availability of chattel loans to finance the purchase of a manufactured home and enhances the consumer protections added by the legislature last session. The bill protects local governments by requiring the mandatory escrow of ad valorem taxes on manufactured homes financed by chattel loans. The bill also raises the level of expertise of industry professionals by requiring certification and continuing education for anyone involved in the sale of manufactured homes. The bill establishes graduated penalties for “hot haulers,” or individuals who transport a manufactured home without a proper permit.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1009 amends various sections of the Occupations Code (or Art. 5221f, V.T.C.S.), Property Code, Finance Code, Tax Code, and Transportation Code to classify manufactured homes as personal property and restore the capability of financing the purchase of a manufactured home using a chattel loan, unless the home must be classified as real property. In doing so, the bill deletes various provisions of law that classify a manufactured home as real property, the financing of which would require a real property loan, unless the home were specifically classified as personal property.

Property Classification

The bill amends Section 1201.222, Occupations Code (or Section 19A, Art. 5221f, V.T.C.S.) and Section 2.001, Property Code to classify as real property a manufactured home if

- it is permanently attached to real property;
- it is titled in the name of the consumer under a deed or contract for sale;
- the manufacturer’s certificate of origin or the original document of title has been surrendered for cancellation; and
- a notice or certificate of attachment has been filed in the real property records of the county in which the home is located.

A manufactured home is also classified as real property if the homeowner has entered into a lease for the real property on which the home is located and the lease specifically permits the recording of a notice or certificate of attachment. Otherwise, a manufactured home is classified as personal property.

The bill amends Section 1201.217, Occupations Code to permit, rather than require, that the manufacturer's certificate or the original document of title to be surrendered to the Texas Department of Housing and Community Affairs ("the department") for cancellation if the manufactured home is permanently attached to real property. The bill amends Section 2.001, Property Code to require the department to issue a document of title for a new and untitled manufactured home at the first retail sale if the home is not classified as real property. Regardless of whether the manufactured home is classified as real or personal property, the department shall issue a document of title for a previously titled manufactured home at any subsequent sale of the home.

C.S.H.B. 1009 amends Section 32.014 Tax Code, to provide that a manufactured home is appraised as an improvement to real property if the homeowner has been issued a certificate of attachment by the department and the homeowner owns the real property on which the home is affixed. In this case, a tax lien attaches to the property on which the home is affixed. The bill provides that a manufactured home is appraised separately from real property if the homeowner has not been issued a certificate of attachment by the department, regardless of who owns the real property. In this case, a tax lien does not attach to the property on which the home is affixed.

Consumer Safeguards

The bill permits a consumer to rescind a contract for sale, exchange, or lease-purchase of a manufactured home without penalty or charge up to three days after the contract was signed. The bill permits a retailer to require an earnest money deposit on a specially ordered manufactured home if an earnest money contract has been signed by all parties, an original binding loan letter has been presented to the consumer, and the consumer has not rescinded the contract. The bill amends Section 1201.508, Occupations Code to prohibit a retailer from requiring a consumer to make a down payment on the acquisition of a manufactured home from the retailer's inventory until the loan contract is executed.

The bill amends Section 1201.162, Occupations Code (or Sec. 21(a), Art. 5221f, V.T.C.S.) to modify language to the disclosure which is provided before a consumer completes a credit application for a manufactured home. The bill adds language to the disclosure outlining appraisals, escrow of ad valorem taxes, insurance, types of mortgages available, and the consumer's right of rescission. With respect to types of mortgages, the amended notice specifically states that a real estate mortgage may have a lower interest rate than a chattel mortgage. The bill requires this notice to be in 12-point type, rather than 10-point type.

For a chattel loan, a retailer shall provide a customer the required disclosure statement and a fully filled out contract, signed by the retailer, at least 24 hours before the contract is executed by the consumer. If a retailer provides a nonbinding estimate regarding the contract price, monthly payment, or interest rate for a chattel loan, the estimate must be made in writing and made in good faith. For a chattel loan, the creditor must require the escrow of ad valorem taxes on the manufactured home by the consumer. For a real property loan, the creditor is not required to provide for the escrow of ad valorem taxes. The bill reduces the requirement that a consumer provide the retailer with a legible copy of the deed containing a legal description of the property to real property loans only. The bill deletes the requirement that the retailer (or others as specified) must file a notice of installation with the county.

Professional Standards

C.S.H.B. 1009 amends Section 1201.113, Occupations Code to require the Manufactured Housing Board ("the board") to administer certification and continuing education programs for persons regulated under the Texas Manufactured Housing Standards Act. Such persons, and other people directly involved in the sale of manufactured housing, must complete eight hours of certification and continuing education annually. The bill eliminates the existing authority for a voluntary certification program. The board is required to suspend the license of any person who does not complete the required program and to reinstate the license upon completion. The bill requires an organization seeking a contract to administer this program to submit an application, and the board is permitted to charge an fee to cover necessary expenses.

C.S.H.B. 1009 permits the director of the Manufactured Housing Board (“the director”) to assess tiered administrative penalties against retailers who fail to provide information to consumers as required by statute. The director may not suspend or revoke a retailer’s license for a single violation of the laws requiring the provision of information to a consumer. However, the director may suspend a license for a second violation and suspend or revoke a license for subsequent violations.

Other Provisions

The bill amends Section 623.104, Transportation Code to increase the penalties for moving a manufactured home over a highway or street without a permit. The bill increases the fine for the first offense to not more than \$1,000 from \$500. The fine is increased to not more than \$2,000 for a second offense and not more than \$4,000 for a subsequent offense.

The bill sets out the relationship of the bill’s provisions to the adoption of various nonsubstantive revisions of the statute, repeals sections of statute both in current law and in a nonsubstantive revision of the statute, and determines the effective date of changes made by the bill with respect to certain penalties, appraisals, and tax liens. The bill provides that its provisions amending the Occupations Code control if a particular nonsubstantive revision takes effect and provisions amending the Vernon’s Texas Civil Statutes control if that revision does not take effect.

EFFECTIVE DATE

On passage or, if the Act does not get the necessary vote, the Act takes effect September 1, 2003. Provisions of the bill related to the certification and continuing education program and the appraisal of manufactured homes take effect January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds provisions granting a right of rescission, requiring a retailer to provide a consumer with the chattel loan contract 24 hours before the consumer executes it, prohibiting a retailer from requiring a down payment for certain in-stock homes, and ensuring certain nonbinding estimates are in good faith. The substitute adds language permitting a retailer to obtain a deposit on specially ordered manufactured homes under certain conditions. The substitute adds a provision to the required notice alerting consumers to the availability of real estate loans at potentially lower interest rates than chattel loans. The substitute adds language changing the notice to 12-point type.

The substitute adds provisions making the escrow of ad valorem taxes for a chattel loan mandatory; escrow is made optional for real estate loans. The substitute deletes the provisions of the original limiting the liability of an employer if its employees complete the certification and continuing education program. The substitute clarifies that a license is suspended, and not forfeited as in the original, if a licensee does not complete that program. The substitute adds provisions providing for graduated penalties for retailers which fail to provide consumers with information as directed by law.

The substitute adds the provision increasing penalties for moving a manufactured home without a permit. The substitute provides for immediate effect for most provisions, and adds language relating to the bill’s interaction with certain nonsubstantive revisions.