

BILL ANALYSIS

S.B. 521
By: Staples
Financial Institutions
Committee Report (Unamended)

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.

S.B. 521 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

S.B. 521 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. The department shall issue a document of title for a previously titled manufactured home at any subsequent sale of the home regardless of whether the home is to be temporarily or permanently installed on real property owned by the home buyer.

Appraisal and Taxation

S.B. 521 amends Section 25.08, Tax Code to provide that a manufactured home shall be listed together with the land on which it is affixed if

- the homeowner has been issued a certificate of attachment by the department;
- the homeowner owns the land on which the home is affixed; and
- the land is not encumbered by a mortgage, deed of trust, or other interest.

A manufactured home is otherwise listed separately from the land in which it is affixed. This determination occurs regardless of the home's classification under the Property Code. The bill amends Section 32.014, Tax Code, to provide that a tax lien attaches to the land on which a home is affixed if the home is listed together with the land. A tax lien does not attach to the land on which a home is affixed if the home is listed separately from the land. The bill provides that Section 32.014, Tax Code prevails over Chapter 1201, Occupations Code to the extent of any conflict.

The bill amends Section 32.03, Tax Code to define "unpaid taxes due" as the sum of all unpaid taxes, penalties, and interest due for a previous tax year plus all taxes due for the current tax year. If taxes have not been levied in the current year, then an estimate is used to calculate unpaid taxes due. The bill provides that a bona fide purchaser for value or the holder of a lien does not have to pay taxes if the chief appraiser states that no unpaid taxes are due, except to the extent that tax liability for a year exceeds "unpaid taxes due."

Consumer Safeguards

S.B. 521 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 Section 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, a creditor is not required to provide for the escrow of ad valorem taxes unless the creditor does so for other loans secured by real property. 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

S.B. 521 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 application fee to cover necessary expenses.

Penalties

S.B. 521 amends Section 1201.605, Occupations Code to permit the director of the Manufactured Housing Board to assess administrative penalties against retailers who fail to provide information to consumers as required by statute. The penalty may not exceed \$1,000 for the first violation, \$2,000 for the second violation, and \$4,000 for each subsequent violation.

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 \$1,000 from \$500. The fine is increased to \$2,000 for a second offense and \$4,000 for a subsequent offense. A person commits an offense if the person knowingly provides compensation to another for the illegal movement of a manufactured home. Such an offense is a misdemeanor punishable by a fine of \$1,000.

Other Provisions

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 V.T.C.S. 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 and taxation of manufactured homes take effect January 1, 2004.