

BILL ANALYSIS

Senate Research Center
78R9672 QS-D

C.S.S.B. 521
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Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

Legislation passed during the 77th Texas Legislature dramatically affected the manufactured housing industry. H.B. 1869, 77th Legislature, redefined manufactured housing as real property, with limited exceptions, and required the sale of a manufactured home to be conducted as a real estate transaction when the home is to be placed on land owned by the consumer. H.B. 1869 also provided consumer protection language. C.S.S.B. 521 restores consumer choice related to financing options while maintaining acquisition requirements and further clarifying when manufactured housing is to be defined as real property. This bill also further establishes requirements for subjecting manufactured home to ad valorem taxation and the escrow of taxes on manufactured housing. This bill reduces legalese in disclosure documents and establishes provisions requiring certification and continuing education. C.S.S.B. 521 also offers alternative changes in the law depending upon whether the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1201.113, Occupations Code, as follows:

Sec. 1201.113. CERTIFICATION AND CONTINUING EDUCATION PROGRAMS.

(a) Requires the governing board (board) of the Texas Department of Housing and Community Affairs (TDHCA), rather than authorizes TDHCA, to recognize, prepare, or administer certification and continuing education programs for persons regulated under this chapter. Deletes text making participation in a certification program voluntary.

(b) Deletes text referring to the board's required duties regarding continuing education programs. Requires a license holder to participate in both certification and continuing education programs as provided by Subsection (e). Deletes text referring to the extent participation is required.

(c) No changes to this subsection.

(d) Requires an organization or institution to submit an application to be considered for a contract under Subsection (c). Authorizes the board to set and charge a fee to cover the costs of processing the application.

(e) Require persons regulated under this chapter and directly involved in the sale of manufactured housing to complete eight hours of certification and continuing education programs each year. Requires the programs to address state and federal law applicable to all manufactured housing retailer practices and relevant consumer protection regulations and ethical standards.

(f) Creates this subsection from existing text. Requires TDHCA to issue an appropriate certificate to a person who completes a certification program and, rather than or, participates in a continuing education program under this program.

(g) Requires the board to suspend the license of a person regulated under this chapter who does not complete the programs as required by this section. Requires the board to reinstate the license on the person's completion of the programs.

SECTION 2. Amends Sections 1201.162 (a) and (b), Occupations Code, as follows if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect:

(a) Includes in the statement provided to the consumer in a certain format that municipalities, not a portion thereof, or subdivisions may restrict the placement of manufactured homes.

Deletes text referring to limited access to water lines and the possibility of having to drill a well. Provides that a consumer should inquire about the cost to join a water system, as well as the rates thereof, if water is available through, not provided by, certain entities.

Requires, instead of authorizes, a consumer to install an on-site sewer facility if the lot is not serviced by a municipal sewer or utility district. Specifies that a consumer should check with a licensed private installer to determine the requirements and costs of such an installation.

Includes text providing that a manufactured home will be appraised and subject to ad valorem taxes as other single-family residential structures. Requires the taxes to be escrowed with the monthly payment except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender does not otherwise require the escrow of taxes or certain other fees and charges in connections with loans secured by residential real property. Provides that the consumer will be notified of all provisions pertaining to federal Truth in Lending disclosures, upon closing.

Includes a section on insurance providing that a lender may require insurance and instructing the consumer in that process.

Includes a section on the types of mortgages available. Authorizes the acquisition of a manufactured home to be financed by a real estate mortgage or a chattel mortgage. Authorizes a real estate mortgage to have a lower interest rate than a chattel mortgage.

Includes a section on the right of rescission. Authorizes, not later than the third day after the acquisition of a manufactured home by certain methods, the rescission of the contract without penalty or charge. Deletes text referring to real property taxes and the homestead exemption.

(b) Deletes text listing certain disclosures and makes nonsubstantive changes.

SECTION 3. Amends Sections 21 (a) and (b), Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.), as follows if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes does not take effect:

(a) Includes in the statement provided to the consumer in a certain format that municipalities, not a portion thereof, or subdivisions may restrict the placement of manufactured homes.

Deletes text referring to limited access to water lines and the possibility of having to drill a well. Provides that a consumer should inquire about the cost to join a water system, as well as the rates thereof, if water is available through, not provided by, certain entities.

Requires, instead of authorizes, a consumer to install an on-site sewer facility if the lot is not serviced by a municipal sewer or utility district. Specifies that a consumer should check with a licensed private installer to determine the requirements and costs of such an

installation.

Includes text providing that a manufactured home will be appraised and subject to ad valorem taxes as other single-family residential structures. Requires the taxes to be escrowed with the monthly payment except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender does not otherwise require the escrow of taxes or certain other fees and charges in connections with loans secured by residential real property. Provides that the consumer will be notified of all provisions pertaining to federal Truth in Lending disclosures, upon closing.

Includes a section on insurance providing that a lender may require insurance and instructing the consumer in that process.

Includes a section on the types of mortgages available. Authorizes the acquisition of a manufactured home to be financed by a real estate mortgage or a chattel mortgage. Authorizes a real estate mortgage to have a lower interest rate than a chattel mortgage.

Includes a section on the right of rescission. Authorizes, not later than the third day after the acquisition of a manufactured home by certain methods, the rescission of the contract without penalty or charge. Deletes text referring to real property taxes and the homestead exemption.

(b) Deletes text listing certain disclosures and makes nonsubstantive changes.

SECTION 4. Amends Chapter 1201D, Occupations Code, by adding Sections 1201.1521, 1201.163, and 1201.164, as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. Authorizes, not later than the third day after the acquisition of a manufactured home by certain methods, the rescission of the contract without penalty or charge.

Sec. 2101.163. ADVANCE COPY OF CONTRACT DISCLOSURE STATEMENT. Requires a retailer, in a chattel mortgage transaction to provide, to a consumer, a completed installment contract and disclosure statement at least 48 hours before the contract is signed.

Sec. 1201.164. WRITTEN ESTIMATE. Requires the estimate, if a retailer gives certain estimates to a consumer, in a chattel mortgage transaction, to be in writing and titled "ESTIMATE--NOT BINDING."

SECTION 5. Amends Section 1201.217 (a)-(d), Occupations Code, as follows:

(a) Authorizes, rather than requires, the manufacturer's certificate or the original document of title to be surrendered to TDHCA for cancellation, except as provided by Section 1201.218 (Permanent Attachment of Manufactured Home: Exception to Cancellation of Title), Occupations Code, if a manufactured home is permanently attached to real property, as defined by Section 2306.004 (Definitions), Government Code. Deletes text referring to a manufactured home becoming an improvement and text referring to exceptions to the requirements of the section.

(b) Requires the legal description or the appropriate tract or parcel number of the real property to be given to TDHCA when the manufacturer's certificate or original document of title is surrendered. Deletes text referring to cancellation and makes a nonsubstantive change.

(c) Makes a conforming and a nonsubstantive change.

(d) Includes an other person authorized to do business in the in state, as well as a title insurance company, in the subsection. Deletes text referring to a person's authorization to file a notice of attachment in the real property records of the county in which the home is located, is that person surrenders the original document of title. Makes nonsubstantive and conforming changes.

SECTION 6. Amends Section 1201.218(a), Occupations Code, to make a conforming change.

SECTION 7. Amends Section 2101.222(a), (b), and (c), Occupations Code, as follows if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes takes effect:

(a) Provides that a manufactured home that is permanently attached to real property and titled in the name of the consumer under a deed or contract for sale is classified as real property if the manufacture's certificate of origin or the original document of title is surrendered for cancellation and a notice of attachment or a certificate of attachment, as described by Section 1201.217 (Permanent Attachment of Manufactured Home: Cancellation of Title), Occupations Code, is filed in the real property records of the county in which the home is located. Deletes text referring to the real property to which the home is attached and text referring to taxed as real property.

(b) Includes the closing of a transaction for the acquisition of real property and a manufactured home, rather than acquisition of a manufactured home, considered to be real property, in the requirement to occur at certain offices. Requires the contract, if the real property is purchased under a contract of sale, to be filed in the real property records of the county in which the home is attached, rather than installed.

(c) Deletes the requirement that a new manufactured home meet applicable state standards. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Sections 19A (a), (b), and (c), Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.), as follows if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes does not take effect:

(a) Provides that a manufactured home that is permanently attached to real property and titled in the name of the consumer under a deed or contract for sale is classified as real property if the manufacture's certificate of origin or the original document of title is surrendered for cancellation and a notice of attachment or a certificate of attachment, as described by Section 1201.217 (Permanent Attachment of Manufactured Home: Cancellation of Title), Occupations Code, is filed in the real property records of the county in which the home is located. Deletes text referring to the real property to which the home is attached text referring to taxed as real property.

(b) Includes the closing of a transaction for the acquisition of real property and a manufactured home, rather than acquisition of a manufactured home, considered to be real property, in the requirement to occur at certain offices. Requires the contract, if the real property is purchased under a contract of sale, to be filed in the real property records of the county in which the home is attached, rather than installed.

(c) Deletes the requirement that a new manufactured home meet applicable state standards. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 1201.508, Occupations Code, by adding Subsection (d) to prohibit the retailer from requiring a consumer to make a down payment on the acquisition of a manufactured home until the time the contract is executed.

SECTION 10. Amends Section 1201.605, Occupations Code, as follows:

Section 1201.605. ADMINISTRATIVE PENALTY. (a) Creates this subsection from existing text. Authorizes TDHCA's executive director (director) to assess against a person, rather than assessing a person.

(b) Authorizes the director to assess against a retailer who fails to provide information to a consumer as required by this chapter an administrative penalty of certain amounts.

SECTION 11. Amends Section 347.254, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires, rather than authorizes, a creditor to require a consumer to pay ad valorem taxes on the manufactured home through the creditor, except as provided by Subsection (c).

(c) Exempts from the escrow requirement of Subsection (a), a real property transaction involving a manufactured home if the creditor does not otherwise require the escrow of taxes or certain other fees and charges in connections with loans secured by residential real property.

SECTION 12. Amends Section 2.001(a), Property Code, to define a manufactured home as personal, rather than real, property.

SECTION 13. Amends and reenacts Section 2.001(b), Property Code, as amended by Chapters 899 and 1055, Acts of the 77th Legislature, Regular Session, 2001, to replace a reference to the Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.) with a reference to Section 1201.217, Occupations Code, and include as an alternative condition by which a manufactured home can be considered real property that the owner of the home 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.

SECTION 14. Amends Section 2.001, Property Code, by amending Subsections (c), (e), and (i) and adding Subsection (e-1), as follows:

(c) Defines "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" according to Chapter 1201 (Manufactured Housing), Occupations Code, rather than the Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.).

(e) Requires TDHCA to issue, rather than prohibits TDHCA from issuing, a document of title for a new, untitled manufactured home at its first retail sale, or for a titled manufactured home at a subsequent sale of the home, regardless of whether the home is to be temporarily or permanently installed on real property titled in the name of the consumer under a deed or contract for sale, except for a manufactured home that is real property as provided by Subsection (b).

(e-1) Requires the consumer, in a real property transaction described by Section 1201.222, Occupations Code, to provide the retailer with a legible copy of the deed containing a legal description of the real property. Deletes text referring to before installation. Deletes text referring to a closing under the Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.).

(i) Replaces the Article 6573a, V.T.C.S. with Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, as the referenced code.

SECTION 15. Amends Section 32.014(a), Tax Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Requires a manufactured home, regardless of the classification of the home under the

Property Code, rather than under a certain circumstance, to be appraised and taxed as an improvement to real property, and provides that the tax lien attaches to the real property on which the manufactured home is affixed, under certain circumstances. Deletes redundant text and makes nonsubstantive changes.

(b) Requires a personal property manufactured home to be separately appraised and taxed at the same rate and on the same ad valorem basis as other single-family residential structures, and the tax lien on the manufactured home does not attach to the real property, under certain circumstances. Deletes text referring to the kind of ownership of the manufactured home. Makes conforming changes.

(d) Establishes that this section prevails over Chapter 1201(Manufactured Housing), Occupations Code, to the extent of any conflict.

SECTION 16. Amends Section 623.104, Transportation Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Provides provisions of Subsection (e) as an exception and increases the fine amount from \$500 to \$1,000.

(e) Establishes certain fines if it is shown on the trial of an offense under Subsection (a) that the defendant has previously been punished under Subsection (d).

SECTION 17. (a) Provides that in accordance with Section 311.031(c) (Saving Provisions), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Sections 1201.113 and 1201.217, Occupations Code, as set out in this Act, gives effect to changes made by Chapters 899, 1055, and 1367, Acts of the 77th Legislature, Regular Session, 2001.

(b) Provides that this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions and corrections in enacted codes, to the extent of any conflict.

SECTION 18. Repealer: Section 1201.162(c), Occupations Code, if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes take effect.

Repealer: Section 21(c), Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.), if the Act of the 78th Legislature, Regular Session 2003, relating to nonsubstantive additions to and corrections in enacted codes does not take effect.

SECTION 19. Repealer: Sections 2.001 (f), (g), and (h) (Manufactured Housing), Property Code.

SECTION 20. (a) Makes application of the change to Section 623.104, Transportation Code, of this Act prospective. Provides that, for purposes of this section, an offense was committed before September 1, 2003, if any element of the offense occurred before that date.

(b) Makes application of the change in Section 32.014, Tax Code, of this Act prospective to January 1, 2004, for purposes of the tax lien.

SECTION 21. Effective dates: September 1, 2003, except for Sections 1 and 15: January 1, 2004.

SUMMARY OF COMMITTEE CHANGES

Differs from the original by adding new SECTIONS 1, 2, 4, 5, 6, 7, 9, 10, 16, 17, 18, 19, and 20.

Differs from the original by redesignating SECTION 4 as SECTION 3; SECTION 3 as SECTION 8; SECTION 6 as SECTION 11; SECTION 5 as SECTIONS 12, 13, and 14;

SECTION 7 as SECTION 15; and SECTION 8 as SECTION 21.

Differs from the original by removing original SECTIONS 1 and 2.

Differs from the original in SECTION 3 by including an exception to the requirement that taxes be escrowed with a monthly payment; by reinstating formerly struck language; by including sections on types of mortgages available, the right of rescission; by including Subsection (b); and by making the bill conform to legislative drafting standards.

Differs from the original in SECTION 8 by including specifications of when a manufactured home that is permanently attached to a real property and titled in the name of the consumer under a deed or contract for sale is classified a real property, removes proposed text regarding a consumer electing to file a notice of attachment with TDHCA, by making conforming changes, and by making the bill conform to legislative drafting standards.

Differs from the original in SECTION 11 by adding Subsection (c) and by providing its provisions as an exception.

Differs from the original in SECTION 13 by redesignating proposed text as existing text and by adding a circumstance under which a manufactured home is considered real property.

Differs from the original in SECTION 14 by adding a manufactured home that is real property as an exception; by adding Subsection (e-1), which is partially created from existing text; by striking text referring to a closing under the Texas Manufactured Housing Standards Act (Article 5221f, V.T.C.S.); and by making the bill conform to legislative drafting standards.

Differs from the original in SECTION 15 by removing proposed text, adding prerequisites for a manufactured home to be appraised and taxed as an improvement to real property, including Subsection (b), and by making the bill conform to legislative drafting standards.

Differs from the original in SECTION 21 by changing the effective date from upon passage or September 1, 2003, to September 1, 2003, except for SECTIONS 1 and 15, for which the effective date is January 1, 2004.