

By: Uresti

H.B. No. 3187

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of manufactured housing in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. A manufacturer's certificate must show that a manufactured home has been built in this state or has been built outside of this state and introduced for sale into this state. The certificate must be filed by the manufacturer with the department, with a copy filed with the comptroller. The certificate may not be used as a document of title [~~+~~

~~[(1) on a form prescribed by the director or on another document, the original transfer of a manufactured home from the manufacturer to the retailer, and~~

~~[(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if presented with an application for a document of title].~~

SECTION 2. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF TITLE. (a) The department may not issue a [~~document of~~] title for a new manufactured home installed for use and occupancy in this state

1 on or after September 1, 2003.

2 (b) A manufactured home may not be installed unless the  
3 state sales and use tax has been paid.

4 (c) [~~(b)~~] Proof of payment may be shown in any manner  
5 prescribed by the comptroller [~~department~~].

6 (d) A manufactured home that is installed without payment of  
7 the state sales and use tax is subject to a \$1,000 fine, to be paid  
8 by the manufacturer.

9 SECTION 3. Chapter 1201, Occupations Code, is amended by  
10 adding Subchapter N to read as follows:

11 SUBCHAPTER N. MANUFACTURED HOME TITLES:

12 PROCEDURE ON OR AFTER SEPTEMBER 1, 2003

13 Sec. 1201.651. NOTICE OF INSTALLATION. (a) On or after  
14 September 1, 2003, a notice of installation is the only document  
15 that must be recorded to provide notice that a manufactured home has  
16 been permanently installed as provided by Section 1201.654.

17 (b) For manufactured homes installed before January 1,  
18 2002, or for manufactured homes installed as personal property  
19 after January 1, 2002, if the home has been permanently installed as  
20 provided by Section 1201.654, the owner of the home may file a  
21 notice of installation in the public records to convert the home to  
22 real property. For a notice of installation filed under this  
23 subsection to be effective, a release of any memorandum of lien  
24 existing on the home must also be recorded in the public record.

25 Sec. 1201.652. MEMORANDUM OF LIEN. (a) On or after  
26 September 1, 2003, a memorandum of lien replaces a document of title  
27 as the sole method for securing a lien on a manufactured home

1 financed as personal property in this state. With respect to a  
2 manufactured home not permanently installed as provided by Section  
3 1201.654, any memorandum of lien existing on the home must be filed  
4 on a UCC-1 financing statement in the public records of the county  
5 where the home is located. A lienholder may file in each county a  
6 master list of the liens claimed by the lienholder.

7 (b) For all liens on manufactured homes that have not been  
8 converted to real property by September 1, 2003, a memorandum of  
9 lien executed solely by the lender under penalty of perjury shall be  
10 recorded as provided by Subsection (a). Not later than July 31,  
11 2003, the department shall notify all lienholders of personal  
12 property loans as reflected on the department's records on June 30,  
13 2003, that, to provide constructive notice of the existence of the  
14 lien, a memorandum of lien must be recorded as provided by  
15 Subsection (a) and that the department will no longer title  
16 manufactured homes, provide any information about specific  
17 manufactured homes, or maintain indices of manufactured homes or  
18 liens on manufactured homes. The department shall publish in the  
19 Texas Register a list of all liens on all manufactured homes in its  
20 records on September 1, 2003. This subsection does not affect the  
21 validity or priority of a lien recorded with the department before  
22 September 1, 2003.

23 Sec. 1201.653. DOCUMENT OF TITLE. For a manufactured home  
24 installed on or after September 1, 2003, a document of title may not  
25 be required or issued at either a first retail sale or a subsequent  
26 sale or transfer.

27 Sec. 1201.654. REAL PROPERTY; PERSONAL PROPERTY. (a)

1 Except as provided by Subsection (b), a manufactured home is  
2 considered to be real property if the home is:

3 (1) installed on real property titled in the name of  
4 the consumer under a deed or contract for sale; and

5 (2) secured to a permanent foundation and a utility as  
6 provided by Section 1201.222(a).

7 (b) Until a notice of installation is recorded, a  
8 manufactured home that would otherwise be considered as real  
9 property under Subsection (a) remains personal property if:

10 (1) the manufactured home is installed on real  
11 property that is not and cannot be claimed as a homestead by the  
12 owner of the home and the real property; or

13 (2) the owner of the real property signs an affidavit  
14 that the home will not be used as a dwelling by a person related to  
15 the owner within the second degree of consanguinity.

16 (c) An affidavit under Subsection (b)(2) must be made under  
17 penalty of perjury.

18 Sec. 1201.655. NOTICE OF INSTALLATION: REQUIRED FORM. The  
19 form of a notice of installation recorded on or after September 1,  
20 2003, must be in substantially the following form:

21 NOTICE OF INSTALLATION:

22 Name of Owner:

23 Description of the Manufactured Home: the manufactured  
24 home's make, model, dimensions, federal label number, state seal  
25 number, and identification or serial number.

1        Legal Description of the Real Property: Being lot ..., Block  
2 ... of the ... Subdivision, a subdivision of ... County, Texas; or  
3 Being a tract of real property situated in ... County, Texas, more  
4 particularly described as ..., there are [] are not [] liens against  
5 the home. If a lien exists, the lien is in favor of ....

6        This notice of installation is made under penalty of perjury.

7        Signature of Owner

8        Acknowledgment

9        Sec. 1201.656. TRACKING. At the first retail sale, the  
10 retailer shall provide to the department, on a form prescribed by  
11 the department, information sufficient to allow tracking of  
12 manufactured homes built in this state or built outside of this  
13 state and introduced for sale into this state.

14        SECTION 4. Section 158.152, Tax Code, is amended to read as  
15 follows:

16        Sec. 158.152. LIEN. The state has a lien on each new  
17 manufactured home installed for use and occupancy in this state for  
18 the collection and payment of the tax imposed by this chapter if the  
19 tax has not been set forth on the invoice or bill of sale on the  
20 initial sale and paid to the manufacturer by the retailer or other  
21 person to whom or for whom the manufactured home is sold, shipped,  
22 or consigned. The lien shall be filed with the county clerk of the  
23 county of this state in which such new manufactured home is  
24 installed for use and occupancy. [~~In addition, the lien shall be~~  
25 ~~filed and recorded with the Texas Department of Licensing and~~

1 ~~Regulation.]~~

2 SECTION 5. (a) Subchapter E, Chapter 1201, Occupations  
3 Code, is amended by adding Section 1201.222 to conform to Section 3,  
4 Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001,  
5 to read as follows:

6 Sec. 1201.222. CERTAIN MANUFACTURED HOMES CONSIDERED REAL  
7 PROPERTY. (a) A manufactured home that is permanently attached to  
8 real property is classified and taxed as real property if the real  
9 property to which the home is attached is titled in the name of the  
10 consumer under a deed or contract for sale. A manufactured home is  
11 considered permanently attached to real property if the home is  
12 secured to a foundation and connected to a utility, including a  
13 utility providing water, electric, natural gas, propane or butane  
14 gas, or wastewater service.

15 (b) The closing of a transaction for the acquisition of a  
16 manufactured home considered to be real property under this section  
17 must occur at the office of a federally insured financial  
18 institution, a title insurer, or an attorney at law. If the real  
19 property is purchased under a contract of sale, the contract must be  
20 filed in the real property records of the county in which the home  
21 is installed.

22 (c) Installation of a manufactured home considered to be  
23 real property under this section must occur in a manner that  
24 satisfies the lending requirements of the Federal Housing  
25 Administration (FHA), Fannie Mae, or Freddie Mac for long-term  
26 mortgage loans or for FHA insurance. The installation of a new  
27 manufactured home must meet, in addition to applicable state

1 standards, the manufacturer's specifications required to validate  
2 the manufacturer's warranty.

3 (d) A civil action to enjoin a violation of this section may  
4 be brought by:

5 (1) a purchaser in the county in which the violation  
6 occurs; or

7 (2) the county in which the violation occurs.

8 (e) A manufactured home permanently attached to real  
9 property before January 1, 2002, or placed in a manufactured home  
10 rental community as defined by Section 232.007, Local Government  
11 Code, is not subject to this section.

12 (f) This section does not require a retailer or retailer's  
13 agent to obtain a license under Chapter 1101.

14 (b) Section 3, Chapter 1055, Acts of the 77th Legislature,  
15 Regular Session, 2001, is repealed.

16 SECTION 6. Section 1201.206, Occupations Code, is repealed.

17 SECTION 7. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2003.