

BILL ANALYSIS

C.S.H.B. 2438

By: Haggerty

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Manufactured Housing Act was originally created by the Texas Legislature in the mid 1970's and codified into the Occupations Code in 2003. During this time the industry has experienced significant change along with amendments to both the Texas Act and the pre-emptive Federal Manufactured Housing Standards Act.

C.S.H.B. 2438 will update language to reflect current industry trends, delete language that is no longer applicable, reference Federal mandates, preserve consumer protections, and raises addresses continuing education requirements.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 1201.101(f), Occupations Code, prohibits a person from selling manufactured housing unless they hold a salespersons license. Prohibits a salesperson from participating in the sale of a home unless the sale is through the retailer who sponsored the salesperson's license application.

SECTION 2. Amends Section 1201.103(d), Occupations Code, requires the application for a license to be sponsored by a licensed, bonded retailer.

SECTION 3. Amends Section 1201.106(a), Occupations Code, requires an applicant or license holder to file a bond for the issuance or renewal of a license for \$50,000, rather than \$20,000, for a broker.

SECTION 4. Amends Section 1201.107, Occupations Code, by adding Subsection (d), requiring a retailer or broker who offers or participates in the sale of a manufactured home to identify the bond on file in conjunction with the person's license and provide contractually in the sales transaction that the bond applies to the sale, if the sale is at a location other than an undivided parcel of real property where more than one manufactured home is located and offered for sale.

SECTION 5. Amends Section 1201.113(a), (b), (e) and (g), Occupations Code, as follows:

(a) requires the board to recognize, prepare, or administer certification and continuing education programs for salespersons, rather than persons, regulated under this chapter.

(b) requires a person who holds a salesperson's license, rather than license holder, to participate in certification and continuing education programs as provided by Subsection (e).

(e) requires a salesperson to complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is issued. Requires a salesperson, to renew a salesperson's license, must complete an additional eight hours of certification and continuing education programs for each renewal, rather than each year. Requires the programs be presented by a board-approved organization or educational institution and include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.

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(g) requires the board to suspend the license of a salesperson who does not complete the programs. Requires the board to reinstate the license on the salesperson's completion of the programs.

SECTION 6. Amends Section 1201.114(a), Occupations Code, provides that a manufacturer's, retailer's, broker's, or installer's license is valid for one year. Provides that a salesperson's license is valid for two years. Authorizes a license to be renewed as provided by the director. Prohibits a license that has been suspended, revoked, or expired from engaging in activities that require a license until the license has been reinstated or renewed.

SECTION 7. Amends Section 1201.151(d), Occupations Code, provides that this section does not apply to money stated to be a down payment in an executed retail, rather than installment, sales contract.

SECTION 8. Amends Section 1201.159(a), Occupations Code, requires a broker to ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer. Strikes language authorizing a broker to be the agent involved in the sale, exchanged, or lease-purchase of a manufactured home.

SECTION 9. Amends Sections 1201.163 (a) and (b), Occupations Code, as follows:

(a) Requires the department to adopt rules creating a one-page form printed in at least 12-point type that addresses consumer protection disclosures required in chattel mortgage transactions and requires them to prescribe the form for the disclosure statement. Prohibits a consumer disclosure statement under this section from containing any blank lines and must contain only the following information:

(1) a statement of the significant differences between chattel mortgages and real estate mortgages;

(2) an itemization of typical costs, rather than estimated closing costs, associated with a chattel mortgage purchase of a manufactured home;

(3) an example, rather than estimate of the total amount, of monthly payments in three typical chattel mortgage transactions, including an estimate of the amount of the principal, interest required insurance premium, and ad valorem taxes. Strikes language requiring the ad valorem taxes to be based on the current tax rate of each taxing unit in which the manufactured home will be located as applied to the sales price of the manufactured home.

(b) Requires a retailer to provide the consumer protection disclosure statement to the consumer before the completion of the first credit application, rather than at least 24 hours before the installment contract is fully executed.

SECTION 10. Amends Section 1201.164(a), Occupations Code, authorizes the retailer to withdraw the offer if the consumer has not accepted the offer within 72 hours after the delivery of the contract. Strikes language requiring the retailer to deliver disclosure statements required by this subchapter to the consumer. Makes conforming changes.

SECTION 11. Amends Section 1201.2055, Occupations Code, by amending Subsection (d) and adding Subsections (e), (f), (g), and (h), as follows:

(d) Requires the department to issue to the owner a certified copy of the statement of ownership and location that on its face reflects that the owner has elected to treat the manufactured home as teal property at the location listed on the statement. Requires the owner to file the certified copy in the real property records of the county in which the home is located; and notify the department that the certified copy has been filed, no later than the 60th day after the date the department issues a certified copy of the statement of ownership and location to the owner.

(e) Provides that a manufactured home is not considered to be real property until a certified copy of the statement of ownership and location has been filed and the department has been notified of the filing as provided by Subsection (d).

(f) Requires the department in a timely manner to note in its records that a real property election has been perfected, if the department is notified under Subsection (d). Requires the department to note in its records that a real property election has not been perfected and that the home remains personal property, if the department is not notified as described by Subsection (d).

(g) Provides that after the department notes in its records that a real property election has been perfected, the home is considered to be real property for all purposes. Makes conforming changes.

(h) Provides that the provisions of this chapter relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a home regardless of whether the home is considered to be real or personal property.

SECTION 12. Amends Sections 1201.206 (d) and (e), Occupations Code, as follows:

(d) requires the seller or transferor to provide to the department a completed application for the issuance of a new statement of ownership and location no later than the 30th day after the date of each subsequent sale or transfer of a home that is considered to be personal property. Provides that the subsequent sale or transfer of a home that is considered to be real property is treated as a sale or transfer of real property and is not subject to regulation by the department.

(e) Ownership of a manufactured home does not pass or vest at the first retail sale of the home until a completed application for the issuance of a statement of ownership and location is filed with the department. Provides that ownership of a manufactured home that is considered to be personal property does not pass or vest at a subsequent sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

SECTION 13. Amends Section 1201.207 (a), Occupations Code, requires the department to process any completed application for the issuance of a statement of ownership and location not later than the 15th, rather than 10th, working day after the date the application is received by the department. Requires the department, if the department rejects an application, to provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

SECTION 14. Amends Subchapter E, Chapter 1201, Occupations Code, as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. Prohibits the department from issuing a statement of ownership and location for a manufactured home being converted from real property to personal property until each lien on the home is released by the lienholder; or each lienholder gives written consent, to be placed on file with the department.

SECTION 15. Amends Section 1201.209 (6), Occupations Code, prohibits the department to refuse to issue a statement of ownership and location and prohibits the suspension or revocation of a statement of ownership and location unless a tax lien, rather than local tax lien, was filed and recorded under Section 1201.219, rather than 32.015, Tax Code, and the lien has not been extinguished.

SECTION 16. Amends Sections 1201.216 (a) and (b), Occupations Code, as follows:

(a) Requires the department to indicate on the statement of ownership and location for the home that the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and except as provided by Section 1201.2055 (h), the department no longer considers the home to be a manufactured home for purposes of regulation under this chapter, if the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage. Strikes language requiring a statement whether the home has been sold, exchanged, or lease-purchased to a purchaser for the purchaser's business use; and requiring the department to issue a new statement of ownership and location that indicates that the home is reserved for business use.

(b) Requires, rather than authorizes, on application and subject to Sections 1201.2076 and 1201.209, the department to issue for the structure described in the application a new statement of ownership and location restoring the structure's designation as a manufactured home only after an inspection and determination that the structure is habitable as provided by Section 1201.453.

SECTION 17. Amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.217, as follows:

Sec. 1201.217. MANUFACTURED HOME ABANDONED. (a) Authorizes the owner of real property on which a manufactured home owned by another is located to declare the home abandoned as provided by this section if the home has been continuously unoccupied for at least six months.

(b) Requires the owner of real property on which the home is located to send a notice of intent to declare the home abandoned to the owner of the home and all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, before declaring a manufactured home abandoned. Provides that mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) Authorizes the owner of the home or a lienholder to freely enter the real property on which the home is located to remove the home on receipt of a notice of intent to declare a manufactured home abandoned.

(d) Provides that if the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked:

(1) all liens on the home are extinguished; and

(2) the real property owner may declare the home abandoned and may apply to the department for a statement of ownership and location listing the real property owner as the owner of the manufactured home.

(e) Provides that a new statement of ownership and location issued by the department under this section transfers, free of any liens, title to the manufactured home to the real property owner.

SECTION 18. Amends Section 1201.219 (b), Occupations Code, provides that except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department.

SECTION 19. Amends Section 1201.221 (a), Occupations Code, requires the department, on written request, to provide information on the current ownership and location of a manufactured home.

SECTION 20. Amends Sections 1201.352 (c) and (d), Occupations Code, as follows:

(c) Requires the retailer to give the consumer a copy, rather than a general description, of certain information before the signing of a binding retail installment sales contract or other binding purchase agreement.

SECTION 21. Amends Section 1201.357, Occupations Code, by adding Subsection (c), requires the manufacturer or retailer to make the allegation in the written statement required by Subsection (a), if the manufacturer or retailer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer. Requires the department to investigate the allegation, and if the department determines that the allegation is credible, the department is required to issue a new order specifying the date and time of the proposed corrective action. Required the department to send the order to the consumer and the manufacturer or retailer, as applicable, by certified mail, return receipt requested. Provides that if the consumer refuses to comply with the department's new order, the manufacturer or retailer, as applicable:

(1) is discharged from the obligation imposed by the relevant department orders;

- (2) has no liability to the consumer; and
- (3) is not subject to an action by the department for failure to provide warranty service.

SECTION 22. Amends Section 1201.361 (b), Occupations Code, requires the warranty to conspicuously disclose the requirements that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Provides that unless the warranty provides for a longer period, the installer has no obligation or liability for any defect described in a written notice received from the consumer more than two years after the date of the installation.

SECTION 23. Amends Section 1201.405, Occupations Code, requires the director to make an independent inquiry of damages actually incurred, unless the damages have been established by a contested jury trial in determining the amount of actual damages under this section.

SECTION 24. Amends Section 1201.451(a), Occupations Code, prohibits a person from selling, exchanging, or lease-purchasing a used manufactured home without the appropriate transfer of good and marketable title to the home, except as otherwise provided by this subchapter. Strikes language allowing the a person to sell, exchange, or lease-purchase a used manufactured home without the appropriate transfer of good and marketable title to the home.

Section 25. Amends Section 1201.455, Occupations Code, requires the warranty of habitability is in force for 60 days after the date of installation or the date of the purchase agreement. Unless not later than the 65th day after the sale, exchange or lease-purchase the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated.

SECTION 26. Amends Section 1201.457, Occupations Code, by changing the heading to include salvaged homes.

SECTION 27. Amends Section 1201.457(b), Occupations Code, prohibits a person purchasing a used manufactured home for business use or the purchaser of a salvaged manufactured home to allow any person to occupy or use the home as a dwelling.

SECTION 28. Amends Section 32.015(a), Tax Code, deletes the September 1, 2001 date for filing tax liens.

SECTION 29. Amends Section 32.03, Tax Code, creating a time frame for filing liens with the department and prohibits the selling of a manufactured home with paying off any and all liens against the statement of ownership and location.

SECTION 30. Repeals various sections of the Occupations Code, and one section of the Transportation Code and Tax Code.

SECTION 31. Effective date: Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

EFFECTIVE DATE

Immediately, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

As originally filed, HB2438 affected current provisions of the Occupations Code, the Tax Code and the Transportation Code. Since manufactured housing is regulated by provisions in each of these codes it is important that verbiage be consistent from code to code to avoid any confusion on the part of industry participants, state regulators and taxing entities. After a through review of the initial draft from Legislative Council and comparing that draft with various provisions of current statute, it became apparent that the proposals originally drafted into CSHB 2438 needed further clarification to ensure the bill met with its legislative intent. In order to clarify its intent and avoid creating unintended conflicts with existing statute it became necessary to produce a committee substitute.

The only substantive difference between the original version and the committee substitute is the effective dates concerning property taxes. As it refers to property taxes, the intent of CSHB 2438 is to establish standard guidelines to ensure the proper collection of taxes. In order for that to occur it is important that all tax, both current and delinquent, be subject to the same procedures once this bill becomes law. The original version of this bill created a situation in which it would be necessary to treat taxes differently depending on the year in which the tax originated and would likely create a great deal of confusion. The committee substitute treats subjects al taxes to one procedure.