

By: Haggerty, Quintanilla

H.B. No. 2438

Substitute the following for H.B. No. 2438:

By: Jones of Lubbock

C.S.H.B. No. 2438

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition and regulation of manufactured homes.

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

SECTION 1. Section 1201.101(f), Occupations Code, is amended to read as follows:

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license [~~is a license holder~~]. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer who sponsored the salesperson's application as required by Section 1201.103(d).

SECTION 2. Section 1201.103(d), Occupations Code, is amended to read as follows:

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides [~~providing~~] any information the director considers necessary [~~+~~] and that is sponsored by a licensed, bonded retailer; and

(2) pay the required fee.

SECTION 3. Section 1201.106(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license or a license holder shall file a bond or other security under Section 1201.105 for the

1 issuance or renewal of a license in the following amount:

- 2 (1) \$100,000 for a manufacturer;
- 3 (2) \$50,000 for a retailer;
- 4 (3) \$30,000 for a rebuilder;
- 5 (4) \$50,000 [~~\$20,000~~] for a broker; or
- 6 (5) \$10,000 for an installer.

7 SECTION 4. Section 1201.107, Occupations Code, is amended
8 by adding Subsection (d) to read as follows:

9 (d) If a retailer or broker offers for sale or participates
10 in any way in the sale of a manufactured home at a location other
11 than an undivided parcel of real property where more than one
12 manufactured home is located and offered for sale, exchange, or
13 lease-purchase by a retailer or broker to the public, the retailer
14 or broker must:

- 15 (1) identify the bond on file with the department in
16 conjunction with that person's license; and
- 17 (2) provide contractually in the sales transaction
18 that the identified bond applies to the sale.

19 SECTION 5. Sections 1201.113(a), (b), (e), and (g),
20 Occupations Code, are amended to read as follows:

21 (a) The board shall recognize, prepare, or administer
22 certification and continuing education programs for salespersons
23 [~~persons~~] regulated under this chapter.

24 (b) A person who holds a salesperson's license [~~holder~~] must
25 participate in certification and continuing education programs as
26 provided by Subsection (e).

27 (e) A salesperson must complete eight hours of

1 certification and continuing education programs not later than the
2 90th day after the date the salesperson's initial license is
3 issued. To renew a salesperson's license, a salesperson ~~[Persons]~~
4 regulated under this chapter ~~[and directly involved in the sale of~~
5 ~~manufactured housing]~~ must complete an additional eight hours of
6 certification and continuing education programs for each renewal
7 ~~[each year]~~. The programs must be presented by a board-approved
8 organization or educational institution and must include
9 instruction in applicable ~~[address]~~ state and federal law,
10 ~~[applicable to all manufactured housing retailer practices and~~
11 ~~relevant]~~ consumer protection regulations, and ethical standards.

12 (g) The board shall suspend the license of a salesperson
13 ~~[person]~~ regulated under this chapter who does not complete the
14 programs as required by this section. The board shall reinstate the
15 license on the salesperson's ~~[person's]~~ completion of the programs.

16 SECTION 6. Section 1201.114(a), Occupations Code, is
17 amended to read as follows:

18 (a) A manufacturer's, retailer's, broker's, or installer's
19 license is valid for one year. A salesperson's license is valid for
20 two years. A license ~~[and]~~ may be renewed as provided by the
21 director. A person whose license has been suspended or revoked or
22 whose license has expired may not engage in activities that require
23 a license until the license has been reinstated or renewed.

24 SECTION 7. Section 1201.151(d), Occupations Code, is
25 amended to read as follows:

26 (d) This section does not apply to:

27 (1) a deposit held in escrow in a real estate

1 transaction; or

2 (2) money stated to be a down payment in an executed
3 retail [~~installment~~] sales contract.

4 SECTION 8. Section 1201.159(a), Occupations Code, is
5 amended to read as follows:

6 (a) A broker shall ensure that the seller gives the buyer
7 the applicable disclosures and warranties that the buyer would have
8 received if the buyer had purchased the manufactured home through a
9 licensed retailer [~~may but is not required to be the agent of a~~
10 ~~party involved in the sale, exchange, or lease-purchase of a~~
11 ~~manufactured home for which a statement of ownership and location~~
12 ~~has been issued and is outstanding)].~~

13 SECTION 9. Sections 1201.163(a) and (b), Occupations Code,
14 are amended to read as follows:

15 (a) In addition to the disclosure statement required by
16 Section 1201.162, the department shall adopt rules creating a
17 one-page form printed in at least 12-point type that addresses
18 [~~addressing~~] consumer protection disclosures required in chattel
19 mortgage transactions and shall prescribe the form for the
20 disclosure statement. A consumer protection disclosure statement
21 under this subsection may not contain any blank lines and must
22 contain only [~~include~~] the following:

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

25 (2) an itemization of typical [~~estimated closing~~]
26 costs associated with a chattel mortgage purchase of a manufactured
27 home [~~, if any~~];

1 (3) an example [~~estimate of the total amount~~] of
2 monthly payments in three typical chattel mortgage transactions,
3 including an estimate of the amount of the [+

4 [~~(A)~~] principal, [~~and~~] interest, [~~payments~~],
5 [~~(B) costs of any~~] required insurance
6 premium, [+] and

7 [~~(C) costs for payment of~~] ad valorem taxes [~~7~~
8 ~~based on the current tax rate of each taxing unit in which the~~
9 ~~manufactured home will be located as applied to the sales price of~~
10 ~~the manufactured home~~];

11 (4) a statement of the roles of the retailer and any
12 affiliated parties in the financing of the first retail sale, as
13 defined by Section 1201.201, and the estimated compensation that
14 they will receive for providing or arranging the financing; and

15 (5) any other disclosures required by state or federal
16 law, including the Real Estate Settlement Procedures Act of 1974
17 (12 U.S.C. Section 2601 et seq.) and the Truth in Lending Act (15
18 U.S.C. Section 1601 et seq.).

19 (b) A retailer shall provide the consumer protection
20 disclosure statement to the consumer [~~at least 24 hours~~] before the
21 completion of the first credit application [~~installment contract is~~
22 ~~fully executed, as provided by Section 1201.164~~].

23 SECTION 10. Section 1201.164(a), Occupations Code, is
24 amended to read as follows:

25 (a) In a chattel mortgage transaction involving an
26 installment contract, a retailer shall deliver to a consumer at
27 least 24 hours before the contract is fully executed [~~the~~

1 ~~disclosure statements required by this subchapter and]~~ the
2 contract, with all required information included, signed by the
3 retailer. The delivery of the ~~[disclosure statements and]~~
4 installment contract, with all required information included,
5 signed by the retailer constitutes a firm offer by the retailer.
6 The consumer may accept the offer not earlier than 24 hours after
7 the delivery of the contract [documents]. If the consumer has not
8 accepted the offer within 72 hours after the delivery of the
9 contract, the retailer may withdraw the offer.

10 SECTION 11. Section 1201.2055, Occupations Code, is amended
11 by amending Subsection (d) and adding Subsections (e), (f), (g),
12 and (h) to read as follows:

13 (d) If ~~[the department issues a statement of ownership and~~
14 ~~location to]~~ an owner elects ~~[who has elected]~~ to treat a
15 manufactured home as real property, the department shall issue to
16 the owner a certified copy of the statement of ownership and
17 location that on its face reflects that the owner has elected to
18 treat the manufactured home as real property at the location listed
19 on the statement. Not later than the 60th day after the date the
20 department issues a certified copy of the statement of ownership
21 and location to the owner, the owner must:

22 (1) file the certified copy in the real property
23 records of the county in which the home is located; and

24 (2) notify the department that the certified copy has
25 been filed.

26 (e) A ~~[the]~~ manufactured home is not considered to be real
27 property until a certified copy of the statement of ownership and

1 location has been filed and the department has been notified of the
2 filing as provided by Subsection (d).

3 (f) If the department is notified under Subsection (d), the
4 department in a timely manner shall note in its records that a real
5 property election has been perfected. If the department is not
6 notified as described by Subsection (d), the department shall note
7 in its records that a real property election has not been perfected
8 and that the home remains personal property [~~in the real property~~
9 ~~records of the county in which the home is located~~].

10 (g) After the department notes in its records that a real
11 property election has been perfected [~~certified copy has been filed~~
12 ~~in the real property records of the county~~], the home is considered
13 to be real property for all purposes [~~in the form of an improvement~~
14 ~~to the underlying real property on which the home is located. If a~~
15 ~~real property election has been made but a certified copy of the~~
16 ~~statement of ownership and location has not been filed as required~~
17 ~~by this subsection, the home continues to be treated as personal~~
18 ~~property until the certified copy is filed~~].

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

23 SECTION 12. Sections 1201.206(d) and (e), Occupations Code,
24 are amended to read as follows:

25 (d) Not later than the 30th day after the date of each [~~At a~~
26 ~~subsequent sale or transfer of a~~ home that is considered to be
27 personal property, the seller [~~purchaser~~] or transferor

1 ~~[transferee]~~ shall provide to the department a completed
2 application ~~[apply]~~ for the issuance of a new statement of
3 ownership and location. The subsequent sale or transfer of a home
4 that is considered to be real property is treated as a sale or
5 transfer of real property and is not subject to regulation by the
6 department.

7 (e) Ownership of a manufactured home does not pass or vest
8 at the first retail ~~[a]~~ sale ~~[or transfer]~~ of the home until a
9 completed application for the issuance of a statement of ownership
10 and location is filed with the department. Ownership of a
11 manufactured home that is considered to be personal property does
12 not pass or vest at a subsequent sale or transfer of the home until a
13 completed application for the issuance of a statement of ownership
14 and location is filed with the department.

15 SECTION 13. Section 1201.207(a), Occupations Code, is
16 amended to read as follows:

17 (a) The department shall process any completed application
18 for the issuance of a statement of ownership and location not later
19 than the 15th ~~[10th]~~ working day after the date the application is
20 received by the department. If the department rejects an
21 application, the department shall provide a clear and complete
22 explanation of the reason for the rejection and instructions on how
23 to cure any defects, if possible.

24 SECTION 14. Subchapter E, Chapter 1201, Occupations Code,
25 is amended by adding Section 1201.2076 to read as follows:

26 Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL
27 PROPERTY. The department may not issue a statement of ownership and

1 location for a manufactured home that is being converted from real
2 property to personal property until:

3 (1) each lien on the home is released by the
4 lienholder; or

5 (2) each lienholder gives written consent, to be
6 placed on file with the department.

7 SECTION 15. Section 1201.209, Occupations Code, is amended
8 to read as follows:

9 Sec. 1201.209. GROUNDS FOR REFUSAL TO ISSUE OR FOR
10 SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP AND LOCATION.
11 The department may not refuse to issue a statement of ownership and
12 location and may not suspend or revoke a statement of ownership and
13 location unless:

14 (1) the application for issuance of the statement of
15 ownership and location contains a false or fraudulent statement,
16 the applicant failed to provide information required by the
17 director, or the applicant is not entitled to issuance of the
18 statement of ownership and location;

19 (2) the director has reason to believe that the
20 manufactured home is stolen or unlawfully converted, or the
21 issuance of a statement of ownership and location would defraud the
22 owner or a lienholder of the manufactured home;

23 (3) the director has reason to believe that the
24 manufactured home is salvaged, and an application for the issuance
25 of a new statement of ownership and location that indicates that the
26 home is salvaged has not been filed;

27 (4) the required fee has not been paid;

1 (5) the state sales and use tax has not been paid in
2 accordance with Chapter 158, Tax Code, and Section 1201.208; or

3 (6) a ~~[local]~~ tax lien was filed ~~[before September 1,~~
4 ~~2001,~~] and recorded under Section 1201.219 ~~[32.015, Tax Code, as~~
5 ~~that section existed on the date the lien was filed,~~] and the lien
6 has not been extinguished.

7 SECTION 16. Sections 1201.216(a) and (b), Occupations Code,
8 are amended to read as follows:

9 (a) If the owner of a manufactured home notifies the
10 department that the owner intends to treat the home as real property
11 or to reserve its use for a business purpose or salvage, the [The]
12 department shall indicate on the statement of ownership and
13 location for the [a manufactured] home that:

14 (1) the owner of the home has elected to treat the home
15 as real property or to reserve its use for a business purpose or
16 salvage; and

17 (2) except as provided by Section 1201.2055(h), the
18 department no longer considers the home to be a manufactured home
19 for purposes of regulation under this chapter [whether the home has
20 been sold, exchanged, or lease-purchased to a purchaser for the
21 purchaser's business use. For a home sold, exchanged, or
22 lease-purchased as described by this subsection, the department
23 shall issue a new statement of ownership and location that
24 indicates that the home is reserved for business use].

25 (b) On application and subject to Sections 1201.2076 and
26 1201.209, the department shall [may] issue for the structure
27 described in the application a new statement of ownership and

1 location restoring the structure's designation as a manufactured
2 ~~[for the]~~ home only after an inspection and determination that the
3 structure ~~[home]~~ is habitable as provided by Section 1201.453.
4 ~~[The statement must indicate that the home is no longer reserved for~~
5 ~~business use.]~~

6 SECTION 17. Subchapter E, Chapter 1201, Occupations Code,
7 is amended by adding Section 1201.217 to read as follows:

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

13 (b) Before declaring a manufactured home abandoned, the
14 owner of real property on which the home is located must send a
15 notice of intent to declare the home abandoned to the owner of the
16 home and all lienholders at the addresses listed on the home's
17 statement of ownership and location on file with the department.
18 Mailing of the notice by certified mail, return receipt requested,
19 postage prepaid, to the persons required to be notified by this
20 subsection constitutes conclusive proof of compliance with this
21 subsection.

22 (c) On receipt of a notice of intent to declare a
23 manufactured home abandoned, the owner of the home or a lienholder
24 may freely enter the real property on which the home is located to
25 remove the home.

26 (d) If the manufactured home remains on the real property
27 for at least 45 days after the date the notice is postmarked:

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

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

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

9 SECTION 18. Section 1201.219(b), Occupations Code, is
10 amended to read as follows:

11 (b) Except as provided by Subsection (a), a lien on a
12 manufactured home is perfected only by filing with the department
13 the notice of lien on a form provided by the department. The
14 recordation of a lien with the department is notice to all persons
15 that the lien exists. Except as expressly provided by Chapter 32,
16 Tax Code, a lien recorded with the department has priority,
17 according to the chronological order of recordation, over another
18 lien or claim against the manufactured home.

19 SECTION 19. Section 1201.221(a), Occupations Code, is
20 amended to read as follows:

21 (a) On written request, the department shall provide
22 information held by the department on:

23 (1) the current ownership and location of a
24 manufactured home; and

25 (2) the existence of any tax lien on that home for
26 which notice has been filed with the department.

27 SECTION 20. Sections 1201.352(c) and (d), Occupations Code,

1 are amended to read as follows:

2 (c) Before the signing of a binding retail installment sales
3 contract or other binding purchase agreement, the retailer must
4 give the consumer a copy [~~or a general description~~] of:

5 (1) the manufacturer's warranty; [~~and~~

6 [~~(2) the retailer's warranty.~~

7 [~~(d) At the time of the initial installation at the
8 consumer's homesite, the retailer shall deliver to the consumer:~~

9 [~~(1) the manufacturer's warranty;~~

10 (2) the retailer's warranty;

11 (3) the warranties given by the manufacturers of
12 appliances or equipment included with the home; and

13 (4) the name and address of the manufacturer or
14 retailer to whom the consumer is to give notice of a warranty
15 service request.

16 SECTION 21. Section 1201.357, Occupations Code, is amended
17 by adding Subsection (c) to read as follows:

18 (c) If the manufacturer or retailer is unable to provide
19 warranty service in accordance with the department order under
20 Section 1201.356 as a result of an action of the consumer, the
21 manufacturer or retailer must make that allegation in the written
22 statement required by Subsection (a). The department shall
23 investigate the allegation, and if the department determines that
24 the allegation is credible, the department shall issue a new order
25 specifying the date and time of the proposed corrective action. The
26 department shall send the order to the consumer and the
27 manufacturer or retailer, as applicable, by certified mail, return

1 receipt requested. If the consumer refuses to comply with the
2 department's new order, the manufacturer or retailer, as
3 applicable:

4 (1) is discharged from the obligations imposed by the
5 relevant department orders;

6 (2) has no liability to the consumer; and

7 (3) is not subject to an action by the department for
8 failure to provide warranty service.

9 SECTION 22. Section 1201.361, Occupations Code, is amended
10 to read as follows:

11 Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all secondary
12 installations not covered by the retailer's warranty described by
13 Section 1201.352 and for the installation of all used manufactured
14 homes, the installer shall give the manufactured home owner a
15 written warranty that the installation of the home was performed in
16 accordance with all department standards, rules, orders, and
17 requirements.

18 (b) The warranty must conspicuously disclose the
19 requirement that the consumer notify the installer of any claim in
20 writing in accordance with the terms of the warranty. Unless the
21 warranty provides for a longer period, the installer has no
22 obligation or liability for any defect described in a written
23 notice received from the consumer more than two years after the date
24 of the installation.

25 SECTION 23. Section 1201.405, Occupations Code, is amended
26 by adding Subsection (e) to read as follows:

27 (e) In determining the amount of actual damages under this

1 section, the director shall make an independent inquiry as to the
2 damages actually incurred, unless the damages have been established
3 by a contested jury trial.

4 SECTION 24. Section 1201.451(a), Occupations Code, is
5 amended to read as follows:

6 (a) Except as otherwise provided by this subchapter, a
7 person may not sell, exchange, or lease-purchase a used
8 manufactured home without the appropriate transfer of good and
9 marketable title to the home [~~unless the sale, exchange, or~~
10 ~~lease-purchase is to:~~

11 [~~(1) a purchaser for the purchaser's business use, or~~

12 [~~(2) a rebuilder for the purpose of rebuilding a~~
13 ~~salvaged manufactured home]~~.

14 SECTION 25. Section 1201.455, Occupations Code, is amended
15 to read as follows:

16 Sec. 1201.455. WARRANTY OF HABITABILITY REQUIRED. (a)
17 Except as otherwise provided by this subchapter, a person may not
18 sell, exchange, or lease-purchase a used manufactured home to a
19 consumer for use as a dwelling without providing a written warranty
20 that the home is and will remain habitable until the 60th day after
21 the later of the installation date or the date of the purchase
22 agreement.

23 (b) Unless, not later than the 65th [~~60th~~] day after the
24 date of the sale, exchange, or lease-purchase agreement, the
25 consumer notifies the seller in writing of a defect that makes the
26 home not habitable, any obligation or liability of the seller under
27 this subchapter is terminated. The warranty must conspicuously

1 disclose that notice requirement to the consumer.

2 SECTION 26. The heading to Section 1201.457, Occupations
3 Code, is amended to read as follows:

4 Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM BUSINESS USE
5 OR SALVAGE.

6 SECTION 27. Section 1201.457(b), Occupations Code, is
7 amended to read as follows:

8 (b) The purchaser of a used manufactured home for business
9 use or the purchaser of a salvaged manufactured home may not sell,
10 exchange, or lease-purchase the home for use as a dwelling or allow
11 any person to occupy or use the home as a dwelling unless the
12 director issues a new statement of ownership and location
13 indicating that the home is no longer reserved for business use or
14 salvage. On the purchaser's application to the department for
15 issuance of a new statement of ownership and location, the
16 department shall inspect the home and, if the department determines
17 that the home is habitable, issue the statement of ownership and
18 location.

19 SECTION 28. Section 32.015(a), Tax Code, is amended to read
20 as follows:

21 (a) On payment of the taxes, penalties, and interest for a
22 year for which a valid tax lien [~~filed before September 1, 2001,~~]
23 has been recorded on the title records of the department, the
24 collector for the taxing unit shall issue a tax certificate showing
25 no taxes due or a tax paid receipt for such year to the person making
26 payment. When the tax certificate showing no taxes due or tax paid
27 receipt is filed with the department, the tax lien is extinguished

1 and canceled and shall be removed from the title records of the
2 manufactured home. The collector for a taxing unit may not refuse
3 to issue a tax paid receipt to the person who offers to pay the
4 taxes, penalties, and interest for a particular year or years, even
5 though taxes may also be due for another year or other years.

6 SECTION 29. Section 32.03, Tax Code, is amended by amending
7 Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to
8 read as follows:

9 (a) Except as provided by Subsection (a-1), a [A] tax lien
10 may not be enforced against personal property transferred to a
11 buyer in ordinary course of business as defined by Section 1.201(9)
12 of the Business & Commerce Code for value who does not have actual
13 notice of the existence of the lien [~~or, if the personal property is~~
14 ~~a manufactured home, who does not have constructive notice of the~~
15 ~~existence of the lien~~].

16 (a-1) A tax lien against a manufactured home may not be
17 enforced unless it has been recorded with the Texas Department of
18 Housing and Community Affairs as provided by Section 1201.219,
19 Occupations Code:

20 (1) before October 1, 2005; or

21 (2) not later than six months after the end of the year
22 for which the tax was owed.

23 (a-2) A person may not transfer title of a manufactured home
24 until all tax liens perfected on the home have been extinguished or
25 satisfied and released. This subsection does not apply to the sale
26 of a manufactured home in inventory.

27 (b) A bona fide purchaser for value or the holder of a lien

1 recorded on the manufactured home statement of ownership and
2 location [~~document of title~~] is not required to pay any taxes that
3 have not been recorded with the Texas Department of Housing and
4 Community Affairs [~~imposed in a tax year that begins before January~~
5 ~~1, 2001, or penalties or interest on those taxes except for each~~
6 ~~year for which a valid tax lien was duly filed and recorded under~~
7 ~~Section 32.015, as that section existed on the date the lien was~~
8 ~~filed, and each year for which the owner of the manufactured home~~
9 ~~had constructive notice of the taxes under Section 32.015(e), as~~
10 ~~that section existed before September 1, 2001. The effect and~~
11 ~~priority of a tax lien that attaches to secure the payment of taxes~~
12 ~~imposed on a manufactured home in a tax year that begins on or after~~
13 ~~January 1, 2001, are those established by Sections 32.01 and~~
14 ~~32.05~~]. In this section, "manufactured home" has the meaning
15 assigned by Section 32.015(b).

16 SECTION 30. The following laws are repealed:

17 (1) Sections 1201.164(b), 1201.165, 1201.206(a),
18 1201.215, 1201.216(c) and (d), 1201.219(d), and 1201.222(b),
19 Occupations Code;

20 (2) Sections 32.014(d) and 32.03(c)-(j), Tax Code; and

21 (3) Section 623.093(d), Transportation Code.

22 SECTION 31. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2005.