

By: Haggerty

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 Subsections (d) and (e) 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 an unbonded
11 location, the retailer or broker must:

12 (1) identify the bond on file with the department in
13 conjunction with that person's license; and

14 (2) provide contractually in the sales transaction
15 that the identified bond applies to the sale at the unbonded
16 location.

17 (e) In this section, "location" means an undivided parcel of
18 real property where more than one manufactured home is located and
19 offered for sale, exchange, or lease-purchase by a retailer or
20 broker to the public.

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

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

26 (b) A person who holds a salesperson's license [~~holder~~] must
27 participate in certification and continuing education programs as

1 provided by Subsection (e).

2 (e) To maintain the salesperson's license, a salesperson
3 ~~[Persons]~~ regulated under this chapter ~~[and directly involved in~~
4 ~~the sale of manufactured housing]~~ must complete eight hours of
5 certification and continuing education programs each year. The
6 programs must address ~~[state and federal law applicable to all~~
7 ~~manufactured housing retailer practices and]~~ relevant consumer
8 protection regulations and ethical standards. A salesperson must
9 complete eight hours of instruction not later than the 90th day
10 after the date the salesperson's initial license is issued.

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

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

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

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

25 (d) This section does not apply to:

26 (1) a deposit held in escrow in a real estate
27 transaction; or

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

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

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

12 SECTION 9. Section 1201.163, Occupations Code, is amended
13 by amending Subsections (a) and (b) and adding Subsection (g) to
14 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 transactions, including the
3 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[~~]~~
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 (g) A consumer may not waive the right to receive the
24 disclosure statement under this section.

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

27 (a) In a chattel mortgage transaction involving an

1 installment contract, a retailer shall deliver to a consumer at
2 least 24 hours before the contract is fully executed [~~the~~
3 ~~disclosure statements required by this subchapter and~~] the
4 contract, with all required information included, signed by the
5 retailer. The delivery of the [~~disclosure statements and~~]
6 installment contract, with all required information included,
7 signed by the retailer constitutes a firm offer by the retailer.
8 The consumer may accept the offer not earlier than 24 hours after
9 the delivery of the contract [~~documents~~].

10 SECTION 11. Section 1201.2055, Occupations Code, is amended
11 by amending Subsection (d) and adding Subsections (e), (f), and (g)
12 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 [~~in the form of an improvement to the underlying~~
14 ~~real property on which the home is located. If a real property~~
15 ~~election has been made but a certified copy of the statement of~~
16 ~~ownership and location has not been filed as required by this~~
17 ~~subsection, the home continues to be treated as personal property~~
18 ~~until the certified copy is filed~~].

19 SECTION 12. Section 1201.206(d), Occupations Code, is
20 amended to read as follows:

21 (d) Not later than the 30th day after the date of each [~~At a~~
22 subsequent sale or transfer of the home, the seller [~~purchaser~~] or
23 transferor [~~transferee~~] shall provide to the department a completed
24 application [~~apply~~] for the issuance of a new statement of
25 ownership and location.

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

1 (a) The department shall process any completed application
2 for the issuance of a statement of ownership and location not later
3 than the 15th [~~10th~~] working day after the date the application is
4 received by the department. If the department rejects an
5 application, the department shall provide a clear and complete
6 explanation of the reason for the rejection and instructions on how
7 to cure any defects, if possible.

8 SECTION 14. Section 1201.209, Occupations Code, is amended
9 to read as follows:

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

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

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

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

- 1 (4) the required fee has not been paid;
- 2 (5) the state sales and use tax has not been paid in
3 accordance with Chapter 158, Tax Code, and Section 1201.208; or
- 4 (6) a ~~[local]~~ tax lien was filed ~~[before September 1,~~
5 ~~2001,~~] and recorded under Section 1201.219 ~~[32.015, Tax Code, as~~
6 ~~that section existed on the date the lien was filed,~~] and the lien
7 has not been extinguished.

8 SECTION 15. Subchapter E, Chapter 1201, Occupations Code,
9 is amended by adding Section 1201.217 to read as follows:

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

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

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

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

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

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

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

11 SECTION 16. Section 1201.219(b), Occupations Code, is
12 amended to read as follows:

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

21 SECTION 17. Sections 1201.352(c) and (d), Occupations Code,
22 are amended to read as follows:

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

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

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

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

3 ~~[(1) the manufacturer's warranty,]~~

4 (2) the retailer's warranty;

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

7 (4) the name and address of the manufacturer or
8 retailer to whom the consumer is to give notice of a warranty
9 service request.

10 SECTION 18. Section 1201.357, Occupations Code, is amended
11 by adding Subsection (c) to read as follows:

12 (c) If the manufacturer's or retailer's failure to provide
13 warranty service under Subsection (a) results from an action of the
14 consumer, the manufacturer or retailer must make that allegation in
15 the written statement required by Subsection (a). The department
16 shall investigate the allegation, and if the department determines
17 that the allegation is credible, the department shall issue a new
18 order specifying the date and time of the proposed corrective
19 action. The department shall send the order to the consumer and the
20 manufacturer or retailer, as applicable, by certified mail, return
21 receipt requested. If the consumer refuses to comply with the
22 department's new order, the manufacturer or retailer, as
23 applicable:

24 (1) is discharged from the obligations imposed by the
25 relevant department orders;

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

27 (3) is not subject to an action by the department for

1 failure to provide warranty service.

2 SECTION 19. Section 1201.361, Occupations Code, is amended
3 to read as follows:

4 Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all secondary
5 installations not covered by the retailer's warranty described by
6 Section 1201.352 and for the installation of all used manufactured
7 homes, the installer shall give the manufactured home owner a
8 written warranty that the installation of the home was performed in
9 accordance with all department standards, rules, orders, and
10 requirements.

11 (b) The warranty must conspicuously disclose the
12 requirement that the consumer notify the installer of any claim in
13 writing in accordance with the terms of the warranty. Unless the
14 warranty provides for a longer period, the installer has no
15 obligation or liability for a defect described in a written notice
16 received from the consumer more than two years after the date of the
17 installation.

18 SECTION 20. Section 1201.405, Occupations Code, is amended
19 by adding Subsection (e) to read as follows:

20 (e) In determining the amount of actual damages under this
21 section, the director shall make an independent inquiry as to the
22 damages actually incurred, unless the damages have been established
23 by a contested jury trial.

24 SECTION 21. Section 1201.451(a), Occupations Code, is
25 amended to read as follows:

26 (a) Except as otherwise provided by this subchapter, a
27 person may not sell, exchange, or lease-purchase a used

1 manufactured home without the appropriate transfer of good and
2 marketable title to the home [~~unless the sale, exchange, or~~
3 ~~lease-purchase is to:~~

4 [~~(1) a purchaser for the purchaser's business use, or~~
5 [~~(2) a rebuilder for the purpose of rebuilding a~~
6 ~~salvaged manufactured home]~~.

7 SECTION 22. Section 1201.455, Occupations Code, is amended
8 to read as follows:

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

16 (b) Unless, not later than the 65th [~~60th~~] day after the
17 date of the sale, exchange, or lease-purchase agreement, the
18 consumer notifies the seller in writing of a defect that makes the
19 home not habitable, any obligation or liability of the seller under
20 this subchapter is terminated. The warranty must conspicuously
21 disclose that notice requirement to the consumer.

22 SECTION 23. The heading to Section 1201.457, Occupations
23 Code, is amended to read as follows:

24 Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM BUSINESS USE
25 OR SALVAGE.

26 SECTION 24. Section 1201.457(b), Occupations Code, is
27 amended to read as follows:

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

12 SECTION 25. Section 25.08(e), Tax Code, is amended to read
13 as follows:

14 (e) A manufactured home shall be listed together with the
15 land on which the home is located if:

16 (1) the statement of ownership and location for the
17 home issued under Section 1201.207, Occupations Code, and on file
18 with the Texas Department of Housing and Community Affairs reflects
19 that the owner has elected to treat the home as real property; and

20 (2) a certified copy of the statement of ownership and
21 location has been filed in the real property records in the county
22 in which the home is located.

23 SECTION 26. Section 32.014(d), Tax Code, is amended to read
24 as follows:

25 (d) If a manufactured home is listed together with the land
26 on which the manufactured home is located, a taxing unit with
27 jurisdiction to impose taxes on the land may place a lien on the

1 manufactured home to secure payment of those taxes to the same
2 extent that it can place a lien on the land by recording a lien under
3 Section 1201.219, Occupations Code. If a home is moved from its
4 location and a new statement of ownership and location is not issued
5 under Section 1201.207, Occupations Code, a taxing unit with
6 jurisdiction to impose taxes on the land on which the manufactured
7 home was located retains the right to record and enforce liens on
8 that home to secure the payment of taxes, regardless of where the
9 home is currently located.

10 SECTION 27. Section 32.015(a), Tax Code, is amended to read
11 as follows:

12 (a) On payment of the taxes, penalties, and interest for a
13 year for which a valid tax lien [~~filed before September 1, 2001,~~]
14 has been recorded on the title records of the department, the
15 collector for the taxing unit shall issue a tax certificate showing
16 no taxes due or a tax paid receipt for such year to the person making
17 payment. When the tax certificate showing no taxes due or tax paid
18 receipt is filed with the department, the tax lien is extinguished
19 and canceled and shall be removed from the title records of the
20 manufactured home. The collector for a taxing unit may not refuse
21 to issue a tax paid receipt to the person who offers to pay the
22 taxes, penalties, and interest for a particular year or years, even
23 though taxes may also be due for another year or other years.

24 SECTION 28. Section 32.03, Tax Code, is amended by amending
25 Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to
26 read as follows:

27 (a) Except as provided by Subsection (a-1), a [A] tax lien

1 may not be enforced against personal property transferred to a
2 buyer in ordinary course of business as defined by Section 1.201(9)
3 of the Business & Commerce Code for value who does not have actual
4 notice of the existence of the lien [~~or, if the personal property is~~
5 ~~a manufactured home, who does not have constructive notice of the~~
6 ~~existence of the lien~~].

7 (a-1) A tax lien against a manufactured home may not be
8 enforced unless it has been recorded with the department as
9 provided by Section 1201.219, Occupations Code:

10 (1) before October 1, 2005; or

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

13 (a-2) A person may not transfer title of a manufactured home
14 until all tax liens perfected on the home have been satisfied and
15 released. This subsection does not apply to the sale of a
16 manufactured home in inventory.

17 (b) A bona fide purchaser for value or the holder of a lien
18 recorded on the manufactured home statement of ownership and
19 location [~~document of title~~] is not required to pay any taxes
20 imposed in a tax year that begins before January 1, 2001, or
21 penalties or interest on those taxes except for each year for which
22 a valid tax lien was duly filed and recorded under Section 32.015,
23 as that section existed on the date the lien was filed, and each
24 year for which the owner of the manufactured home had constructive
25 notice of the taxes under Section 32.015(e), as that section
26 existed before September 1, 2001. The effect and priority of a tax
27 lien that attaches to secure the payment of taxes imposed on a

1 manufactured home in a tax year that begins on or after January 1,
2 2001, are those established by Sections 32.01 and 32.05. In this
3 section, "manufactured home" has the meaning assigned by Section
4 32.015(b).

5 SECTION 29. The following laws are repealed:

6 (1) Sections 1201.164(b), 1201.165, 1201.206(a),
7 1201.215, 1201.219(d), and 1201.222(b), Occupations Code;

8 (2) Sections 32.03(c)-(j), Tax Code; and

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

10 SECTION 30. The changes in law made by this Act to
11 provisions of the Tax Code apply only to an ad valorem tax year that
12 begins on or after January 1, 2006. The changes in law made to those
13 provisions do not affect a tax lien that attached to property for a
14 tax year that began before January 1, 2006, and the law in effect
15 immediately before January 1, 2006, is continued in effect for
16 purposes of the tax lien.

17 SECTION 31. This Act takes effect September 1, 2005.