

BILL ANALYSIS

C.S.H.B. 2238
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Manufactured Housing Standards Act, a successor to laws dating back to 1969, was enacted by the Texas Legislature in 1979 and was codified in the Occupations Code in 2001, effective June 2003. Over the years, the industry has experienced significant change, as have Texas statutes and the Federal Manufactured Housing Standards Act.

C.S.H.B. 2238 proposes several changes to Chapter 1201 of the Occupations Code to provide greater consumer protections through increased enforcement authority granted to the manufactured housing division of the Texas Department of Housing and Community Affairs and revisions to procedures for license holders. The bill increases the duration of a renewal license from one year to two years and revises the law relating to the department's issuance of statements of ownership and location.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Manufactured Housing Board within the Texas Department of Housing and Community Affairs in SECTIONS 2 and 3 of this bill.

ANALYSIS

C.S.H.B. 2238 amends the Occupations Code to authorize any required action relating to manufactured housing to be accomplished by electronic means, if feasible. The bill authorizes the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs, in accordance with rules adopted by the Manufactured Housing Board, to waive the imposition of any fee relating to manufactured housing in an affected area if the governor by executive order or proclamation declares a state of disaster. The bill allows the board to make changes through the rulemaking process regarding courses of instruction. The bill specifies that an applicant for a salesperson's license must successfully complete a course of instruction pertaining to the license not later than the 90th day after the date of the person's licensure, if the applicant applies without having first completed the course. The bill removes the requirement that classes required for an applicant for a manufacturer's, retailer's, broker's, installer's, salvage rebuilders, or salesperson's license be conducted live as well as the provision prohibiting the classes from being online or in another electronic form. The bill requires completion of, rather than attendance at, a continuing education course as a prerequisite to a license renewal. The bill removes a provision authorizing the issuance of a probationary license under certain conditions. The bill specifies that the payment of the fee to renew a license is payment of the required fee, rather than of the annual fee. The bill extends the license term from one year to two years by changing the date on which a renewal license expires from the first anniversary of the date the license was renewed to the second anniversary of that date.

C.S.H.B. 2238 specifies that the tax assessor-collector required to file a statement indicating there are no personal property taxes due on certain used manufactured homes that may have accrued during a specified time period is the tax assessor-collector for the taxing unit having

power to tax the manufactured home. The bill adds the servicing of a loan on a manufactured home or the change in ownership of a lien on a manufactured home to the exceptions to the department's authority to issue a subsequent statement of ownership and location for a home if all owners reflected in the department's records as having ownership interest in the home give their consent or release their interest. The bill adds an exception to the prohibition against the department's altering a record of the ownership or lien status to allow the department to change a record of ownership or lien status to accurately reflect the proper owner's or lienholder's identity.

C.S.H.B. 2238 includes any intervening owners of liens or equitable interests in the persons required to be notified by the owner of real property on which a manufactured home is located before the owner can declare the manufactured home abandoned. The bill specifies that if the owner of real property giving notice of intent to declare a manufactured home abandoned knows that the person to be notified no longer resides and is no longer receiving mail at a known address, rather than at the address of the manufactured home, reasonable effort shall be made to locate the person and give the notice. The bill includes an intervening owner of a lien or equitable interest in the persons authorized to enter the real property on which the manufactured home is located under certain conditions and includes an intervening owner in the persons seeking to remove the name to which the real property owner must disclose the home's location.

C.S.H.B. 2238 clarifies that a tax lien on a manufactured home is perfected only by filing with the department the notice of the tax lien on a form provided by the department in accordance with Tax Code requirements. The bill requires the form to require the disclosure of the original dollar amount of the tax lien and the name and address of the person in whose name the manufactured home is listed on the tax roll. The bill requires the department to disclose on its Internet website the date of each tax lien filing; the original amount of the tax lien claimed by each filing; and the fact that that amount shown does not include additional sums, including interest, penalties, and attorney's fees. The bill provides that the statement of ownership and location is notice to all persons that the tax lien exists. The bill provides that a tax lien recorded with the department has priority over another lien or claim against the manufactured home. The bill requires tax liens to be filed by the tax collector for any tax unit having the power to tax the manufactured home. The bill provides that a single filing by a tax collector is a filing for all the taxing units for which the tax collector is empowered to collect.

C.S.H.B. 2238 clarifies that a provision prohibiting an installer from installing a manufactured home at a location on a site with certain conditions applies to a used manufactured home. The bill adds a manufacturer, retailer, or installer whose license is suspended or subject to an administrative sanction to the license holders for which a manufacturer, retailer, or installer whose license is not revoked, suspended, or subject to an administrative sanction may perform a warranty obligation.

C.S.H.B. 2238 provides that a retailer responsible for the installation of a manufactured home is not required to hold an installer's license if the retailer subcontracts the installation to a licensed installer, but that the retailer in addition to the installer, are jointly and severally liable for performance of the warranty.

C.S.H.B. 2238 specifies that the manufactured homeowner's trust recovery fund be paid directly to a consumer or, at the option of the executive director, to a third party on behalf of a consumer.

C.S.H.B. 2238 repeals a provision requiring a statement of election relating to an owner's treatment of a manufactured home as personal property or real property be executed before a notary public. The bill repeals provisions requiring proof of insurance for an installer and limiting an attorney's fees and costs as actual damages paid for a claim from the manufactured homeowner's recovery trust fund.

C.S.H.B. 2238 repeals the following sections of the Occupations Code:

- Section 1201.160;
- Section 1201.2055(b); and
- Section 1201.405(b)

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2238 differs from the original by authorizing the use of electronic means to accomplish any action relating to manufactured housing, whereas the original requires the Manufactured Housing Board to adopt rules to facilitate the use of electronic means for any department action under these provisions, as appropriate. The substitute adds a provision not in the original to authorize the director to waive fees in the affected area if the governor declares a state of disaster. The substitute differs from the original by removing language relating to the issuance of a probationary license, whereas the original does not remove this language. The substitute makes a change not made in the original to specify that the renewal fee is a required fee, rather than an annual fee.

C.S.H.B. 2238 differs from the original by removing the requirement that a seller file an application for the issuance of a statement of ownership and location for certain used manufactured homes and by specifying that a statement from the tax assessor-collector refers to the tax assessor-collector for the taxing unit having the power to tax the manufactured home. The substitute removes a provision from the original amending language relating to the issuance of a statement of ownership. The substitute, in the provision authorizing the department to issue a subsequent statement of ownership and location for a manufactured home, removes from the original the inclusion of lienholders as persons reflected in the department's records as having an ownership interest in the home and that must give written consent of release or release their interest. The substitute differs from the original by authorizing the department to alter the record of the ownership or lien status to accurately reflect the proper owner's or lienholder's identity, whereas the original applies that provision to the identity of the owner of record. The substitute adds language not in the original to include an intervening owner of a lien or equitable interest in the persons who are required to receive notice of intent to declare a manufactured home abandoned, to authorize such an intervening owner to enter the real property on which the home is located to remove the home, and to include an intervening owner in the persons seeking to remove the home to which the real property owner must disclose the home's location. The substitute makes a change not in the original to specify that a person is required to make a reasonable effort to give notice of the intent to declare a manufactured home abandoned if the person giving notice knows that the person to be notified no longer resides and is no longer receiving mail at a known address.

C.S.H.B. 2238 differs from the original by removing the qualification that priority be given according to the chronological order of recordation of a tax lien. The substitute makes changes not in the original to specify that a used manufactured home may not be installed at certain locations and to include a manufacturer, retailer, or installer whose license has been suspended or is subject to a judicial review to the licensees whose warranty obligations may be performed by a manufacturer, retailer, or installer whose license is in good standing. The substitute adds language not in the original to require that the manufactured homeowner's recovery trust fund be paid directly to a consumer or, at the option of the executive director, to a third party on behalf of a consumer, whereas the original does not make this requirement.

C.S.H.B. 2238 repeals two provisions not repealed in the original relating to proof of insurance for an installer and a limitation on attorney's fees and costs paid for a claim from the manufactured homeowners' recovery trust fund.