

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2238
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 amends current law relating to the regulation of manufactured housing.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Manufactured Housing Board in SECTION 2 (Section 1201.058, Occupations Code) of this bill.

Rulemaking authority previously granted to the Manufactured Housing Board is modified in SECTION 3 (Section 1201.104, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 1201, Occupations Code, by adding Section 1201.009, as follows:

Sec. 1201.009. ELECTRONIC MEANS AUTHORIZED. Authorizes any action required under this chapter, if feasible, to be accomplished by electronic means.

SECTION 2. Amends Section 1201.058, Occupations Code, by adding Subsection (e), to authorize the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs (TDHCA) (director), if the governor by executive order or proclamation declares a state of disaster under Chapter 418 (Texas Economic Development and Tourism Office), in accordance with rules adopted by the Manufactured Housing Board (board) within TDHCA, to waive the imposition of any fee under this chapter in the affected area.

SECTION 3. Amends Sections 1201.104(c), (e), and (f), Occupations Code, as follows:

(c) Authorizes an applicant for a salesperson's license to apply for a license without having completed the course of instruction if, rather than provided that, the person successfully completes the course not later than the 90th day after the date of the person's licensure, rather than the next scheduled course offered after the date of the person's licensure.

(e) Deletes existing text requiring that classes be live, and providing that online or other electronic classes are not permitted.

(f) Requires an applicant for an initial installer's license to receive a license on a provisional basis, rather than a probationary basis. Provides that the person's provisional status, rather than probationary status, remains, rather than shall remain, in effect until, rather than until such time as, a sufficient number of installations completed by the person have been inspected by TDHCA and found not to have any identified material violations of TDHCA's rules.

SECTION 4. Amends Section 1201.113(b), Occupations Code, to provide that completion of, rather than attendance at, an approved or administered continuing education course described by Subsection (a) (relating to TDHCA approved or administered continuing education programs) is a prerequisite to renewal of a license.

SECTION 5. Amends Section 1201.114, Occupations Code, as follows:

Sec. 1201.114. New heading: LICENSE EXPIRATION. Provides that any license under this chapter is valid for two years, rather than that any license under this chapter other than a probationary license is valid for two years. Deletes existing Subsection (b) relating to the issuance of a license on a probationary basis. Makes a nonsubstantive change.

SECTION 6. Amends Sections 1201.116(a) and (c), Occupations Code, as follows:

(a) Requires TDHCA to renew a license if TDHCA receives the renewal application and payment of the required fee, rather than annual fee, before the expiration date of the license.

(c) Provides that the renewal license expires on the second, rather than the first, anniversary of the date the license was renewed.

SECTION 7. Amends Section 1201.204(c), Occupations Code, to require TDHCA, if an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, on or before the issuance of the required statement of ownership and location, to send written notice to each party currently reflected on TDHCA's records as having a record lien on the inventory of that retailer with respect to that home.

SECTION 8. Amends Section 1201.206(g), Occupations Code, to require that when an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory is filed, a statement from the tax assessor-collector for the taxing unit having power to tax the manufactured home also be filed with TDHCA, rather than requiring the seller, when the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory to also file with TDHCA a statement from the tax assessor-collector. Requires that the statement from the tax-assessor collector indicate that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the sale.

SECTION 9. Amends Section 1201.207(c), Occupations Code, to authorize TDHCA, except with respect to any change in use, servicing of a loan on a manufactured home, or change in ownership of a lien on a manufactured home, but subject to Section 1201.2075 (Conversion from Personal Property to Real Property), if TDHCA has issued a statement of ownership and location for a manufactured home, to issue a subsequent statement of ownership and location for the home only if all owners, rather than parties, reflected in TDHCA's records as having an ownership interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or TDHCA has followed the procedures provided by Section 1201.206(k) (relating to TDHCA's authorization to issue a statement of ownership and location) to document ownership and lien status. Prohibits TDHCA, once TDHCA issues a statement of ownership and location, from altering the record of the ownership or lien status, other than to change the record to accurately reflect the proper owner's or lienholder's identity, of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative, or a court order.

SECTION 10. Amends Sections 1201.217(b) and (c), Occupations Code, as follows:

(b) Requires the owner of a real property on which a home is located, before declaring a manufactured home abandoned, to send a notice of intent to declare the home abandoned to the record owner of the home, all lienholders at the addresses listed on the home's statement of ownership and location on file with TDHCA, the tax collector for each

taxing unit that imposes ad valorem taxes on the real property where the home is located, and any intervening owners of liens or equitable interests. Requires if the person giving such notice knows that a person, rather than the person, to whom the notice is being given no longer resides and is no longer receiving mail at a known address, rather than such address, a reasonable effort to be made to locate the person and give the person notice at an address where the person is receiving mail.

(c) Authorizes the record owner of the home, a lienholder, a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located, or an intervening owner of a lien or equitable interest, on receipt of a notice of intent to declare a manufactured home abandoned, to enter the real property on which the home is located to remove the home. Requires the real property owner to disclose to the record owner, lienholder, tax assessor-collector, or intervening owner seeking to remove the home the location of the home and grant the person reasonable access to the home. Provides that a person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

SECTION 11. Amends Section 1201.219, Occupations Code, by amending Subsection (b), and adding Subsection (d), as follows:

(b) Provides that except as provided by Subsection (a) (relating to the circumstances under which a manufactured home is considered abandoned) and subject to Subsection (d), a lien on a manufactured home is perfected only by filing with TDHCA the notice of lien on a form provided by TDHCA. Deletes existing text requiring the form to require the disclosure of the original dollar amount of the lien and, if a tax lien, the name and address of the person in whose name the manufactured home is listed on the tax roll; requiring TDHCA to disclose on its website the date of each lien filing, the original amount of the lien claimed by each filing, and the fact that the amount shown does not include additional sums including interest, penalties, and attorney's fees; providing that the statement required by Section 1201.205(7) (relating to a statement regarding tax liens) is notice to all persons that the tax lien exists; providing that except as expressly provided by Chapter 32 (Tax Liens and Personal Liability), Tax Code, a lien recorded with TDHCA has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home; requiring tax liens to be filed by the tax collector for any taxing unit having the power to tax the manufactured home; providing 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.

(d) Provides that except as provided by Subsection (a), a tax lien on a manufactured home is perfected only by filing with TDHCA the notice of the tax lien on a form provided by TDHCA in accordance with the requirements of Chapter 32, Tax Code. Requires that the form 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. Requires TDHCA 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 the amount shown does not include additional sums, including interest, penalties, and attorney's fees. Provides that the statement required by Section 1201.205(7) is notice to all persons that the tax lien exists. Provides that a tax lien recorded with TDHCA has priority over another lien or claim against the manufactured home. Requires that tax liens be filed by the tax collector for any taxing unit having the power to tax the manufactured home. 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.

SECTION 12. Amends Section 1201.255(b), Occupations Code, to prohibit an installer from installing a used manufactured home at a location on a site that has evidence of ponding, runoff under heavy rains, or bare uncompacted soil unless the installer first obtains the owner's signature on a form promulgated by the board disclosing that such conditions may contribute to problems with the stabilization system for that manufactured home, including possible damage to that home, and the owner accepts that risk.

SECTION 13. Amends Section 1201.358(c), Occupations Code, to authorize the director to issue an order directing a manufacturer, retailer, or installer whose license is not revoked, suspended, or subject to an administrative sanction under Section 1201.357(b) (relating to actions required to be taken if a manufacturer, retailer, or installer fails or refuses to provide warranty service) and who is not out of business to perform the warranty obligation of a manufacturer, retailer, or installer whose license is revoked, suspended or subject to an administrative sanction under Section 1201.357(b) or who is out of business.

SECTION 14. Amends Section 1201.404(a), Occupations Code, to require that the trust fund, except as otherwise provided by Subchapter C (Licensing), be paid directly to a consumer or, at the director's option, to a third party on behalf of a consumer, to compensate, rather than be used to compensate, a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from violations of certain statutes, rules, or regulations.

SECTION 15. Repealer: Section 1201.160 (Proof of Insurance Required for Installer), Occupations Code;

Repealer: Section 1201.2055(b) (relating to requirements for a statement of election under Subsection (a)), Occupations Code; and

Repealer: Section 1201.405(b) (relating to the provision that attorney's fees and costs are limited to 20 percent of the amount of actual damages.), Occupations Code.

SECTION 16. (a) Makes application of Sections 1201.104(c) and (f), as amended by this Act, prospective.

(b) Makes application of Sections 1201.113(b) and 1201.116(a) and (c), Occupations Code, as amended by this Act, prospective.

(c) Makes application of Section 1201.206(g), Occupations Code, as amended by this Act, prospective.

SECTION 17. Effective date: September 1, 2009.