

By: Hamilton

H.B. No. 2238

Substitute the following for H.B. No. 2238:

By: Thompson

C.S.H.B. No. 2238

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of manufactured housing.

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

SECTION 1. Subchapter A, Chapter 1201, Occupations Code, is amended by adding Section 1201.009 to read as follows:

Sec. 1201.009. ELECTRONIC MEANS AUTHORIZED. If feasible, any action required under this chapter may be accomplished by electronic means.

SECTION 2. Section 1201.058, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) If the governor by executive order or proclamation declares a state of disaster under Chapter 418, Government Code, the director, in accordance with rules adopted by the board, may waive the imposition of any fee under this chapter in the affected area.

SECTION 3. Sections 1201.104(c), (e), and (f), Occupations Code, are amended to read as follows:

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction if ~~[provided that]~~ the person successfully completes the ~~[next scheduled]~~ course not later than the 90th day ~~[offered]~~ after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully

1 completes the course.

2 (e) The board shall adopt rules relating to course content
3 and approval. [~~Classes must be live. Online or other electronic~~
4 ~~classes are not permitted.~~]

5 (f) An applicant for an initial installer's license shall
6 receive a license on a provisional [~~probationary~~] basis. The
7 person's provisional [~~probationary~~] status remains [~~shall remain~~]
8 in effect until [~~such time as~~] a sufficient number of installations
9 completed by the person have been inspected by the department and
10 found not to have any identified material violations of the
11 department's rules. The board, with the advice of the advisory
12 committee to be established under Section 1201.251, shall adopt
13 rules to establish what constitutes a sufficient number of
14 installations under this subsection.

15 SECTION 4. Section 1201.113(b), Occupations Code, is
16 amended to read as follows:

17 (b) Completion of [~~Attendance at~~] an approved or
18 administered continuing education course described by Subsection
19 (a) is a prerequisite to renewal of a license.

20 SECTION 5. Section 1201.114, Occupations Code, is amended
21 to read as follows:

22 Sec. 1201.114. LICENSE EXPIRATION[~~, PROBATIONARY LICENSE~~].
23 [~~(a)~~] Any license under this chapter [~~other than a probationary~~
24 ~~license~~] is valid for two years. A license may be renewed as
25 provided by the director. A person whose license has been suspended
26 or revoked or whose license has expired may not engage in activities
27 that require a license until the license has been reinstated or

1 renewed.

2 ~~[(b) If the director determines that a licensed salesperson~~
3 ~~or installer should receive a probationary license, the director~~
4 ~~may issue a probationary license on such terms and for such period~~
5 ~~as are deemed reasonable. The issuance of a license on a~~
6 ~~probationary basis, any one or more of the specific terms of the~~
7 ~~probation, or the period of probation may be appealed before the~~
8 ~~31st day after issuance of the probationary license by written~~
9 ~~notice to the director. If appeal is made, the director shall set~~
10 ~~the matter for a hearing before the State Office of Administrative~~
11 ~~Hearings, and all administrative proceedings relating to the~~
12 ~~issuance of the probationary license shall be deemed to be a~~
13 ~~contested case under Chapter 2001, Government Code. If no appeal is~~
14 ~~made, the probationary license shall be issued and shall remain in~~
15 ~~effect in accordance with the terms specified.]~~

16 SECTION 6. Sections 1201.116(a) and (c), Occupations Code,
17 are amended to read as follows:

18 (a) The department shall renew a license if the department
19 receives the renewal application and payment of the required
20 ~~[annual]~~ fee before the expiration date of the license.

21 (c) The renewal license expires on the second ~~[first]~~
22 anniversary of the date the license was renewed.

23 SECTION 7. Section 1201.204(c), Occupations Code, is
24 amended to read as follows:

25 (c) After the first retail sale of a manufactured home, the
26 retailer must submit the original manufacturer's certificate for
27 that home to the department. If an application for an initial

1 statement of ownership is made without the required manufacturer's
2 certificate and the retailer does not provide it as required, the
3 department shall, on or before the issuance of the requested
4 statement of ownership and location, send written notice to each
5 party currently reflected on the department's records as having a
6 recorded lien on the inventory of that retailer with respect to that
7 home. Failure to include the original manufacturer's certificate
8 with such an application does not impair a consumer's ability to
9 obtain, on submittal of an otherwise complete application, a
10 statement of ownership and location free and clear of any liens
11 other than liens created by or consented to by the consumer.

12 SECTION 8. Section 1201.206(g), Occupations Code, is
13 amended to read as follows:

14 (g) When [~~the seller files~~] an application for the issuance
15 of a statement of ownership and location for a used manufactured
16 home that is not in a retailer's inventory is filed, [~~the seller~~
17 ~~shall also file with the department~~] a statement from the tax
18 assessor-collector for the taxing unit having power to tax the
19 manufactured home shall also be filed with the department. The
20 statement from the tax assessor-collector must indicate that there
21 are no personal property taxes due on the manufactured home that may
22 have accrued on each January 1 that falls within the 18 months
23 before the date of the sale.

24 SECTION 9. Section 1201.207(c), Occupations Code, is
25 amended to read as follows:

26 (c) Except with respect to any change in use, servicing of a
27 loan on a manufactured home, or change in ownership of a lien on a

1 manufactured home, but subject to Section 1201.2075, if the
2 department has issued a statement of ownership and location for a
3 manufactured home, the department may issue a subsequent statement
4 of ownership and location for the home only if all owners [~~parties~~]
5 reflected in the department's records as having an ownership
6 interest in the manufactured home give their written consent or
7 release their interest, either in writing or by operation of law, or
8 the department has followed the procedures provided by Section
9 1201.206(k) to document ownership and lien status. Once the
10 department issues a statement of ownership and location, the
11 department may [~~shall~~] not alter the record of the ownership or lien
12 status, other than to change the record to accurately reflect the
13 proper owner's or lienholder's identity, of a manufactured home for
14 any activity occurring before the issuance of the statement of
15 ownership and location without either the written permission of the
16 owner of record for the manufactured home, their legal
17 representative, or a court order.

18 SECTION 10. Sections 1201.217(b) and (c), Occupations Code,
19 are amended to read as follows:

20 (b) Before declaring a manufactured home abandoned, the
21 owner of real property on which the home is located must send a
22 notice of intent to declare the home abandoned to the record owner
23 of the home, all lienholders at the addresses listed on the home's
24 statement of ownership and location on file with the department,
25 [~~and~~] the tax collector for each taxing unit that imposes ad valorem
26 taxes on the real property where the home is located, and any
27 intervening owners of liens or equitable interests. The notice

1 must include the address where the home is currently located. If
2 the person giving such notice knows that a [~~the~~] person to whom the
3 notice is being given no longer resides and is no longer receiving
4 mail at a known [~~such~~] address, a reasonable effort shall be made to
5 locate the person and give the person notice at an address where the
6 person is receiving mail. Mailing of the notice by certified mail,
7 return receipt requested, postage prepaid, to the persons required
8 to be notified by this subsection constitutes conclusive proof of
9 compliance with this subsection.

10 (c) On receipt of a notice of intent to declare a
11 manufactured home abandoned, the record owner of the home, a
12 lienholder, [~~or~~] a tax assessor-collector for a taxing unit that
13 imposes ad valorem taxes on the real property on which the home is
14 located, or an intervening owner of a lien or equitable interest may
15 enter the real property on which the home is located to remove the
16 home. The real property owner must disclose to the record owner,
17 lienholder, [~~or~~] tax assessor-collector, or intervening owner
18 seeking to remove the home the location of the home and grant the
19 person reasonable access to the home. A person removing a home is
20 responsible to the real property owner for any damage to the real
21 property resulting from the removal of the home.

22 SECTION 11. Section 1201.219, Occupations Code, is amended
23 by amending Subsection (b) and adding Subsection (d) to read as
24 follows:

25 (b) Except as provided by Subsection (a) and subject to
26 Subsection (d), a lien on a manufactured home is perfected only by
27 filing with the department the notice of lien on a form provided by

1 the department. ~~[The form shall require the disclosure of the~~
2 ~~original dollar amount of the lien and, if a tax lien, the name and~~
3 ~~address of the person in whose name the manufactured home is listed~~
4 ~~on the tax roll.]~~ The department shall disclose on its website the
5 date of each lien filing. ~~A~~~~[, the original amount of the lien~~
6 ~~claimed by each filing, and the fact that the amount shown does not~~
7 ~~include additional sums including interest, penalties, and~~
8 ~~attorney's fees. The statement required by Section 1201.205(7) is~~
9 ~~notice to all persons that the tax lien exists. Except as expressly~~
10 ~~provided by Chapter 32, Tax Code, a] lien recorded with the~~
11 department has priority, according to the chronological order of
12 recordation, over another lien or claim against the manufactured
13 home~~[. Tax liens shall be filed by the tax collector for any taxing~~
14 ~~unit having the power to tax the manufactured home. A single filing~~
15 ~~by a tax collector is a filing for all the taxing units for which the~~
16 ~~tax collector is empowered to collect].~~

17 (d) Except as provided by Subsection (a), a tax lien on a
18 manufactured home is perfected only by filing with the department
19 the notice of the tax lien on a form provided by the department in
20 accordance with the requirements of Chapter 32, Tax Code. The form
21 must require the disclosure of the original dollar amount of the tax
22 lien and the name and address of the person in whose name the
23 manufactured home is listed on the tax roll. The department shall
24 disclose on its Internet website the date of each tax lien filing,
25 the original amount of the tax lien claimed by each filing, and the
26 fact that the amount shown does not include additional sums,
27 including interest, penalties, and attorney's fees. The statement

1 required by Section 1201.205(7) is notice to all persons that the
2 tax lien exists. A tax lien recorded with the department has
3 priority over another lien or claim against the manufactured home.
4 Tax liens shall be filed by the tax collector for any taxing unit
5 having the power to tax the manufactured home. A single filing by a
6 tax collector is a filing for all the taxing units for which the tax
7 collector is empowered to collect.

8 SECTION 12. Section 1201.255(b), Occupations Code, is
9 amended to read as follows:

10 (b) An installer may not install a used manufactured home at
11 a location on a site that has evidence of ponding, runoff under
12 heavy rains, or bare uncompacted soil unless the installer first
13 obtains the owner's signature on a form promulgated by the board
14 disclosing that such conditions may contribute to problems with the
15 stabilization system for that manufactured home, including
16 possible damage to that home, and the owner accepts that risk.

17 SECTION 13. Section 1201.358(c), Occupations Code, is
18 amended to read as follows:

19 (c) The director may issue an order:

20 (1) directing a manufacturer, retailer, or installer
21 whose license is not revoked, suspended, or subject to an
22 administrative sanction under Section 1201.357(b) and who is not
23 out of business to perform the warranty obligation of a
24 manufacturer, retailer, or installer whose license is revoked,
25 suspended, or subject to an administrative sanction under Section
26 1201.357(b) or who is out of business; and

27 (2) giving the manufacturer, retailer, or installer

1 performing the obligation the right of indemnification against
2 another party.

3 SECTION 14. Section 1201.361(a), Occupations Code, is
4 amended to read as follows:

5 (a) For all installations, the installer shall give the
6 manufactured home owner a written warranty that the installation of
7 the home was performed in accordance with all department standards,
8 rules, orders, and requirements. The warranty for the installation
9 of a new HUD-code manufactured home is to be given by the retailer,
10 who is responsible for installation. If the retailer subcontracts
11 this function to a licensed installer, the retailer is not required
12 to hold an installer's license, but the retailer and installer are
13 jointly and severally responsible for performance of the warranty.

14 SECTION 15. Section 1201.404(a), Occupations Code, is
15 amended to read as follows:

16 (a) Except as otherwise provided by Subchapter C, the trust
17 fund shall be paid directly to a consumer or, at the director's
18 option, to a third party on behalf of a consumer ~~used~~ to
19 compensate a consumer who sustains actual damages resulting from an
20 unsatisfied claim against a licensed manufacturer, retailer,
21 broker, or installer if the unsatisfied claim results from a
22 violation of:

- 23 (1) this chapter;
- 24 (2) a rule adopted by the director;
- 25 (3) the National Manufactured Housing Construction
26 and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
- 27 (4) a rule or regulation of the United States

1 Department of Housing and Urban Development; or

2 (5) Subchapter E, Chapter 17, Business & Commerce
3 Code.

4 SECTION 16. The following sections of the Occupations Code
5 are repealed:

6 (1) Section 1201.160;

7 (2) Section 1201.2055(b); and

8 (3) Section 1201.405(b).

9 SECTION 17. (a) Sections 1201.104(c) and (f), Occupations
10 Code, as amended by this Act, apply only to a license application
11 filed with the executive director of the manufactured housing
12 division of the Texas Department of Housing and Community Affairs
13 on or after the effective date of this Act. An application filed
14 with the executive director of the manufactured housing division of
15 the Texas Department of Housing and Community Affairs before the
16 effective date of this Act is governed by the law in effect
17 immediately before that date, and the former law is continued in
18 effect for that purpose.

19 (b) Sections 1201.113(b) and 1201.116(a) and (c),
20 Occupations Code, as amended by this Act, apply only to a license
21 that is renewed on or after the effective date of this Act. A
22 license that is renewed before the effective date of this Act is
23 governed by the law in effect immediately before that date, and the
24 former law is continued in effect for that purpose.

25 (c) Section 1201.206(g), Occupations Code, as amended by
26 this Act, applies only to an application for a statement of
27 ownership and location filed on or after the effective date of this

1 Act. An application for a statement of ownership and location filed
2 before the effective date of this Act is governed by the law in
3 effect immediately before that date, and the former law is
4 continued in effect for that purpose.

5 SECTION 18. This Act takes effect September 1, 2009.