

1-1 By: Hamilton (Senate Sponsor - Eltife) H.B. No. 2238
1-2 (In the Senate - Received from the House April 14, 2009;
1-3 April 15, 2009, read first time and referred to Committee on
1-4 Business and Commerce; April 24, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; April 24, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2238 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of manufactured housing.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter A, Chapter 1201, Occupations Code, is
1-13 amended by adding Section 1201.009 to read as follows:

1-14 Sec. 1201.009. ELECTRONIC MEANS AUTHORIZED. If feasible,
1-15 any action required under this chapter may be accomplished by
1-16 electronic means.

1-17 SECTION 2. Section 1201.058, Occupations Code, is amended
1-18 by adding Subsection (e) to read as follows:

1-19 (e) If the governor by executive order or proclamation
1-20 declares a state of disaster under Chapter 418, Government Code,
1-21 the director, in accordance with rules adopted by the board, may
1-22 waive the imposition of any fee under this chapter in the affected
1-23 area.

1-24 SECTION 3. Sections 1201.104(c), (e), and (f), Occupations
1-25 Code, are amended to read as follows:

1-26 (c) An applicant for a salesperson's license may apply for a
1-27 license without having completed the course of instruction if
1-28 [provided that] the person successfully completes the [next
1-29 scheduled] course not later than the 90th day [offered] after the
1-30 date of the person's licensure. If the person fails to complete
1-31 such course successfully and in a timely manner, the person's
1-32 license is automatically suspended until the person successfully
1-33 completes the course.

1-34 (e) The board shall adopt rules relating to course content
1-35 and approval. [Classes must be live. Online or other electronic
1-36 classes are not permitted.]

1-37 (f) An applicant for an initial installer's license shall
1-38 receive a license on a provisional [probationary] basis. The
1-39 person's provisional [probationary] status remains [shall remain]
1-40 in effect until [such time as] a sufficient number of installations
1-41 completed by the person have been inspected by the department and
1-42 found not to have any identified material violations of the
1-43 department's rules. The board, with the advice of the advisory
1-44 committee to be established under Section 1201.251, shall adopt
1-45 rules to establish what constitutes a sufficient number of
1-46 installations under this subsection.

1-47 SECTION 4. Section 1201.113(b), Occupations Code, is
1-48 amended to read as follows:

1-49 (b) Completion of [Attendance at] an approved or
1-50 administered continuing education course described by Subsection
1-51 (a) is a prerequisite to renewal of a license.

1-52 SECTION 5. Section 1201.114, Occupations Code, is amended
1-53 to read as follows:

1-54 Sec. 1201.114. LICENSE EXPIRATION~~[, PROBATIONARY LICENSE]~~.
1-55 ~~[(a)]~~ Any license under this chapter ~~[other than a probationary~~
1-56 ~~license]~~ is valid for two years. A license may be renewed as
1-57 provided by the director. A person whose license has been suspended
1-58 or revoked or whose license has expired may not engage in activities
1-59 that require a license until the license has been reinstated or
1-60 renewed.

1-61 ~~[(b) If the director determines that a licensed salesperson~~
1-62 ~~or installer should receive a probationary license, the director~~
1-63 ~~may issue a probationary license on such terms and for such period~~
1-64 ~~as are deemed reasonable. The issuance of a license on a~~
1-65 ~~probationary basis, any one or more of the specific terms of the~~

~~probation, or the period of probation may be appealed before the 31st day after issuance of the probationary license by written notice to the director. If appeal is made, the director shall set the matter for a hearing before the State Office of Administrative Hearings, and all administrative proceedings relating to the issuance of the probationary license shall be deemed to be a contested case under Chapter 2001, Government Code. If no appeal is made, the probationary license shall be issued and shall remain in effect in accordance with the terms specified.]~~

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

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

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

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

(c) After the first retail sale of a manufactured home, the retailer must submit the original manufacturer's certificate for that home to the department. 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, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer with respect to that home. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or consented to by the consumer.

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

(g) 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 is filed, ~~[the seller shall also file with the department]~~ a statement from the tax assessor-collector for the taxing unit having power to tax the manufactured home shall also be filed with the department. The statement from the tax assessor-collector must 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. Section 1201.207(c), Occupations Code, is amended to read as follows:

(c) 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, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter 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. Sections 1201.217(b) and (c), Occupations Code, are amended to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must 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

3-1 statement of ownership and location on file with the department,
3-2 ~~and~~ the tax collector for each taxing unit that imposes ad valorem
3-3 taxes on the real property where the home is located, and any
3-4 intervening owners of liens or equitable interests. The notice
3-5 must include the address where the home is currently located. If
3-6 the person giving such notice knows that a ~~the~~ person to whom the
3-7 notice is being given no longer resides and is no longer receiving
3-8 mail at a known ~~such~~ address, a reasonable effort shall be made to
3-9 locate the person and give the person notice at an address where the
3-10 person is receiving mail. Mailing of the notice by certified mail,
3-11 return receipt requested, postage prepaid, to the persons required
3-12 to be notified by this subsection constitutes conclusive proof of
3-13 compliance with this subsection.

3-14 (c) On receipt of a notice of intent to declare a
3-15 manufactured home abandoned, the record owner of the home, a
3-16 lienholder, ~~or~~ a tax assessor-collector for a taxing unit that
3-17 imposes ad valorem taxes on the real property on which the home is
3-18 located, or an intervening owner of a lien or equitable interest may
3-19 enter the real property on which the home is located to remove the
3-20 home. The real property owner must disclose to the record owner,
3-21 lienholder, ~~or~~ tax assessor-collector, or intervening owner
3-22 seeking to remove the home the location of the home and grant the
3-23 person reasonable access to the home. A person removing a home is
3-24 responsible to the real property owner for any damage to the real
3-25 property resulting from the removal of the home.

3-26 SECTION 11. Section 1201.219, Occupations Code, is amended
3-27 by amending Subsection (b) and adding Subsection (d) to read as
3-28 follows:

3-29 (b) Except as provided by Subsection (a) and subject to
3-30 Subsection (d), a lien on a manufactured home is perfected only by
3-31 filing with the department the notice of lien on a form provided by
3-32 the department. ~~[The form shall require the disclosure of the~~
3-33 ~~original dollar amount of the lien and, if a tax lien, the name and~~
3-34 ~~address of the person in whose name the manufactured home is listed~~
3-35 ~~on the tax roll.]~~ The department shall disclose on its website the
3-36 date of each lien filing. ~~A[, the original amount of the lien~~
3-37 ~~claimed by each filing, and the fact that the amount shown does not~~
3-38 ~~include additional sums including interest, penalties, and~~
3-39 ~~attorney's fees. The statement required by Section 1201.205(7) is~~
3-40 ~~notice to all persons that the tax lien exists. Except as expressly~~
3-41 ~~provided by Chapter 32, Tax Code, a] lien recorded with the~~
3-42 department has priority, according to the chronological order of
3-43 recordation, over another lien or claim against the manufactured
3-44 home~~[. Tax liens shall be filed by the tax collector for any taxing~~
3-45 ~~unit having the power to tax the manufactured home. A single filing~~
3-46 ~~by a tax collector is a filing for all the taxing units for which the~~
3-47 ~~tax collector is empowered to collect]~~.

3-48 (d) Except as provided by Subsection (a), a tax lien on a
3-49 manufactured home is perfected only by filing with the department
3-50 the notice of the tax lien on a form provided by the department in
3-51 accordance with the requirements of Chapter 32, Tax Code. The form
3-52 must require the disclosure of the original dollar amount of the tax
3-53 lien and the name and address of the person in whose name the
3-54 manufactured home is listed on the tax roll. The department shall
3-55 disclose on its Internet website the date of each tax lien filing,
3-56 the original amount of the tax lien claimed by each filing, and the
3-57 fact that the amount shown does not include additional sums,
3-58 including interest, penalties, and attorney's fees. The statement
3-59 required by Section 1201.205(7) is notice to all persons that the
3-60 tax lien exists. A tax lien recorded with the department has
3-61 priority over another lien or claim against the manufactured home.
3-62 Tax liens shall be filed by the tax collector for any taxing unit
3-63 having the power to tax the manufactured home. A single filing by a
3-64 tax collector is a filing for all the taxing units for which the tax
3-65 collector is empowered to collect.

3-66 SECTION 12. Section 1201.255(b), Occupations Code, is
3-67 amended to read as follows:

3-68 (b) An installer may not install a used manufactured home at
3-69 a location on a site that has evidence of ponding, runoff under
3-70 heavy rains, or bare uncompacted soil unless the installer first
3-71 obtains the owner's signature on a form promulgated by the board

4-1 disclosing that such conditions may contribute to problems with the
4-2 stabilization system for that manufactured home, including
4-3 possible damage to that home, and the owner accepts that risk.

4-4 SECTION 13. Section 1201.358(c), Occupations Code, is
4-5 amended to read as follows:

4-6 (c) The director may issue an order:

4-7 (1) directing a manufacturer, retailer, or installer
4-8 whose license is not revoked, suspended, or subject to an
4-9 administrative sanction under Section 1201.357(b) and who is not
4-10 out of business to perform the warranty obligation of a
4-11 manufacturer, retailer, or installer whose license is revoked,
4-12 suspended, or subject to an administrative sanction under Section
4-13 1201.357(b) or who is out of business; and

4-14 (2) giving the manufacturer, retailer, or installer
4-15 performing the obligation the right of indemnification against
4-16 another party.

4-17 SECTION 14. Section 1201.404(a), Occupations Code, is
4-18 amended to read as follows:

4-19 (a) Except as otherwise provided by Subchapter C, the trust
4-20 fund shall be paid directly to a consumer or, at the director's
4-21 option, to a third party on behalf of a consumer ~~used~~ to
4-22 compensate a consumer who sustains actual damages resulting from an
4-23 unsatisfied claim against a licensed manufacturer, retailer,
4-24 broker, or installer if the unsatisfied claim results from a
4-25 violation of:

4-26 (1) this chapter;

4-27 (2) a rule adopted by the director;

4-28 (3) the National Manufactured Housing Construction
4-29 and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

4-30 (4) a rule or regulation of the United States
4-31 Department of Housing and Urban Development; or

4-32 (5) Subchapter E, Chapter 17, Business & Commerce
4-33 Code.

4-34 SECTION 15. The following sections of the Occupations Code
4-35 are repealed:

4-36 (1) Section 1201.160;

4-37 (2) Section 1201.2055(b); and

4-38 (3) Section 1201.405(b).

4-39 SECTION 16. (a) Sections 1201.104(c) and (f), Occupations
4-40 Code, as amended by this Act, apply only to a license application
4-41 filed with the executive director of the manufactured housing
4-42 division of the Texas Department of Housing and Community Affairs
4-43 on or after the effective date of this Act. An application filed
4-44 with the executive director of the manufactured housing division of
4-45 the Texas Department of Housing and Community Affairs before the
4-46 effective date of this Act is governed by the law in effect
4-47 immediately before that date, and the former law is continued in
4-48 effect for that purpose.

4-49 (b) Sections 1201.113(b) and 1201.116(a) and (c),
4-50 Occupations Code, as amended by this Act, apply only to a license
4-51 that is renewed on or after the effective date of this Act. A
4-52 license that is renewed before the effective date of this Act is
4-53 governed by the law in effect immediately before that date, and the
4-54 former law is continued in effect for that purpose.

4-55 (c) Section 1201.206(g), Occupations Code, as amended by
4-56 this Act, applies only to an application for a statement of
4-57 ownership and location filed on or after the effective date of this
4-58 Act. An application for a statement of ownership and location filed
4-59 before the effective date of this Act is governed by the law in
4-60 effect immediately before that date, and the former law is
4-61 continued in effect for that purpose.

4-62 SECTION 17. This Act takes effect September 1, 2009.

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