

1-1 By: Hinojosa, Hegar S.B. No. 665
1-2 (In the Senate - Filed March 9, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Government Organization;
1-4 May 2, 2011, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; May 2, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the Texas Department
1-9 of Housing and Community Affairs.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 ARTICLE 1. GENERAL OPERATIONS AND ADMINISTRATION OF THE TEXAS
1-12 DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

1-13 SECTION 1.01. Section 2306.022, Government Code, is amended
1-14 to read as follows:

1-15 Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas
1-16 Department of Housing and Community Affairs is subject to Chapter
1-17 325 (Texas Sunset Act). Unless continued in existence as provided
1-18 by that chapter, the department is abolished and this chapter
1-19 expires September 1, 2023 [2011].

1-20 SECTION 1.02. Subsection (c), Section 2306.043, Government
1-21 Code, is amended to read as follows:

1-22 (c) The notice must:

1-23 (1) include a brief summary of the alleged violation;
1-24 (2) state the amount of the recommended penalty; and
1-25 (3) inform the person of the person's right to a
1-26 hearing before the State Office of Administrative Hearings [~~board~~]
1-27 on the occurrence of the violation, the amount of the penalty, or
1-28 both.

1-29 SECTION 1.03. Subsection (a), Section 2306.044, Government
1-30 Code, is amended to read as follows:

1-31 (a) Not later than the 20th day after the date the person
1-32 receives the notice, the person in writing may:

1-33 (1) accept the determination and recommended penalty
1-34 of the director; or

1-35 (2) make a request for a hearing before the State
1-36 Office of Administrative Hearings [~~board~~] on the occurrence of the
1-37 violation, the amount of the penalty, or both.

1-38 SECTION 1.04. Section 2306.045, Government Code, is amended
1-39 to read as follows:

1-40 Sec. 2306.045. HEARING. (a) If the person requests a
1-41 hearing before the State Office of Administrative Hearings [~~board~~]
1-42 or fails to respond in a timely manner to the notice, the director
1-43 shall set a hearing and give written notice of the hearing to the
1-44 person.

1-45 (b) The State Office of Administrative Hearings [~~board~~]
1-46 shall:

1-47 (1) hold the hearing;

1-48 (2) [~~and~~] make findings of fact and conclusions of law
1-49 about the occurrence of the violation and the amount of a proposed
1-50 penalty; and

1-51 (3) issue a proposal for decision regarding the
1-52 penalty and provide notice of the proposal to the board.

1-53 (c) Any administrative proceedings relating to the
1-54 imposition of a penalty under Section 2306.041 is a contested case
1-55 under Chapter 2001.

1-56 SECTION 1.05. Subsection (a), Section 2306.046, Government
1-57 Code, is amended to read as follows:

1-58 (a) The board shall issue an order after receiving a
1-59 proposal for decision from the State Office of Administrative
1-60 Hearings under Section 2306.045 [~~Based on the findings of fact and~~
1-61 ~~conclusions of law, the board by order may:~~

1-62 [~~(1) find that a violation occurred and impose a~~
1-63 ~~penalty; or~~

1-64 [~~(2) find that a violation did not occur].~~

2-1 SECTION 1.06. Subsection (a), Section 2306.049, Government
 2-2 Code, is amended to read as follows:

2-3 (a) Judicial review of a board order imposing an
 2-4 administrative penalty is under the substantial evidence rule [~~by~~
 2-5 ~~trial de novo~~].

2-6 SECTION 1.07. Section 2306.6721, Government Code, is
 2-7 transferred to Subchapter B, Chapter 2306, Government Code,
 2-8 redesignated as Section 2306.0504, Government Code, and amended to
 2-9 read as follows:

2-10 Sec. 2306.0504 [~~2306.6721~~]. DEBARMENT FROM PROGRAM
 2-11 PARTICIPATION. (a) The board by rule shall adopt a policy
 2-12 providing for the debarment of a person from participation in
 2-13 programs administered by the department [~~the low income housing tax~~
 2-14 ~~credit program as described by this section~~].

2-15 (b) The department may debar a person from participation in
 2-16 a department [~~the~~] program on the basis of the person's past failure
 2-17 to comply with any condition imposed by the department in the
 2-18 administration of its programs [~~connection with the allocation of~~
 2-19 ~~housing tax credits~~].

2-20 (c) The department shall debar a person from participation
 2-21 in a department [~~the~~] program if the person:

2-22 (1) materially or repeatedly violates any condition
 2-23 imposed by the department in connection with the administration of
 2-24 a department program, including a material or repeated violation of
 2-25 a land use restriction agreement regarding a development supported
 2-26 with a [~~allocation of~~] housing tax credit allocation [~~credits~~]; or

2-27 (2) is debarred from participation in federal housing
 2-28 programs by the United States Department of Housing and Urban
 2-29 Development [~~or~~

2-30 [~~(3) is in material noncompliance with or has~~
 2-31 ~~repeatedly violated a land use restriction agreement regarding a~~
 2-32 ~~development supported with a housing tax credit allocation~~].

2-33 (d) A person debarred by the department from participation
 2-34 in a department [~~the~~] program may appeal the person's debarment to
 2-35 the board.

2-36 ARTICLE 2. DISASTER MANAGEMENT PLANNING

2-37 SECTION 2.01. Section 418.106, Government Code, is amended
 2-38 by adding Subsection (b-1) to read as follows:

2-39 (b-1) The plan must identify:

2-40 (1) any requirements or procedures that local agencies
 2-41 and officials must satisfy or implement to:

2-42 (A) qualify for long-term federal disaster
 2-43 recovery funding; and

2-44 (B) prepare for long-term disaster recovery; and

2-45 (2) any appropriate state or local resources available
 2-46 to assist the local agencies and officials in satisfying or
 2-47 implementing those requirements or procedures.

2-48 SECTION 2.02. Chapter 2306, Government Code, is amended by
 2-49 adding Subchapter X-1 to read as follows:

2-50 SUBCHAPTER X-1. LONG-TERM DISASTER RECOVERY PLAN

2-51 Sec. 2306.531. LONG-TERM DISASTER RECOVERY PLAN. (a) The
 2-52 department, in consultation with the Texas Department of Rural
 2-53 Affairs and the office of the governor, shall develop a long-term
 2-54 disaster recovery plan to administer money received for disaster
 2-55 recovery from the federal government or any other source.

2-56 (b) In developing and administering the plan:

2-57 (1) the department:

2-58 (A) has primary responsibility over matters
 2-59 related to housing; and

2-60 (B) shall consult with:

2-61 (i) existing disaster recovery entities
 2-62 established by law or local, state, or federal agreements;

2-63 (ii) local government officials,
 2-64 contractors, community advocates, businesses, nonprofit
 2-65 organizations, and other stakeholders; and

2-66 (iii) the United States Department of
 2-67 Housing and Urban Development to ensure that the plan complies with
 2-68 federal law; and

2-69 (2) the Texas Department of Rural Affairs:

3-1 (A) has primary responsibility over matters
3-2 related to infrastructure; and
3-3 (B) shall consult with:
3-4 (i) existing disaster recovery entities
3-5 established by law or local, state, or federal agreements; and
3-6 (ii) local government officials,
3-7 contractors, community advocates, businesses, nonprofit
3-8 organizations, and other stakeholders.
3-9 (c) The plan developed under this section must establish or
3-10 identify:
3-11 (1) a method of distribution of disaster relief
3-12 funding to local areas, subject to modification by the governor
3-13 based on the nature of the disaster;
3-14 (2) guidelines for outreach to program applicants and
3-15 for eligible housing and infrastructure activities;
3-16 (3) eligibility criteria for program applicants;
3-17 (4) housing quality standards;
3-18 (5) priorities for serving local populations;
3-19 (6) procedures for establishing compliance with
3-20 federal requirements;
3-21 (7) procedures for coordination and communication
3-22 among federal, state, and local entities;
3-23 (8) pre-disaster and post-disaster training programs;
3-24 (9) a procedure for each department to compile,
3-25 update, and post on that department's Internet website in advance
3-26 of hurricane season all relevant forms and information for program
3-27 applicants;
3-28 (10) federal and state monitoring and reporting
3-29 requirements, including a list of the types of data that local
3-30 government officials may be required to collect, analyze, and
3-31 report;
3-32 (11) the state information technology systems and
3-33 processes that will be used to administer funds from the federal
3-34 government or any other source;
3-35 (12) a process for identifying elements of disaster
3-36 recovery where coordination between or among state agencies will be
3-37 required; and
3-38 (13) a process for implementing memoranda of
3-39 understanding in areas of disaster recovery where interagency
3-40 coordination will be required.
3-41 (d) The plan established under this section must be updated
3-42 biennially and approved by the governor.
3-43 (e) Biennially, the governor shall designate a state agency
3-44 to be the primary agency in charge of coordinating the distribution
3-45 of long-term disaster recovery funding.

3-46 ARTICLE 3. HOUSING TRUST FUND PROGRAM; LOW INCOME HOUSING TAX
3-47 CREDIT PROGRAM
3-48 SECTION 3.01. Subsection (d-1), Section 2306.111,
3-49 Government Code, is amended to read as follows:
3-50 (d-1) In allocating low income housing tax credit
3-51 commitments under Subchapter DD, the department shall, before
3-52 applying the regional allocation formula prescribed by Section
3-53 2306.1115, set aside for at-risk developments, as defined by
3-54 Section 2306.6702, not less than the minimum amount of housing tax
3-55 credits required under Section 2306.6714. Funds or credits are not
3-56 required to be allocated according to the regional allocation
3-57 formula under Subsection (d) if:
3-58 (1) the funds or credits are reserved for
3-59 contract-for-deed conversions or for set-asides mandated by state
3-60 or federal law and each contract-for-deed allocation or set-aside
3-61 allocation equals not more than 10 percent of the total allocation
3-62 of funds or credits for the applicable program;
3-63 (2) the funds or credits are allocated by the
3-64 department primarily to serve persons with disabilities; or
3-65 (3) the funds are housing trust funds administered by
3-66 the department under Sections 2306.201-2306.206 that are not
3-67 otherwise required to be set aside under state or federal law and do
3-68 not exceed \$3 million for each programmed activity during each
3-69 application cycle.

4-1 SECTION 3.02. Section 2306.67022, Government Code, is
4-2 amended to read as follows:

4-3 Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. At
4-4 least biennially, the [The] board [annually] shall adopt a
4-5 qualified allocation plan and a corresponding manual to provide
4-6 information regarding the administration of and eligibility for the
4-7 low income housing tax credit program. The board may adopt the plan
4-8 and manual annually, as considered appropriate by the board.

4-9 SECTION 3.03. Subsection (b), Section 2306.6710,
4-10 Government Code, is amended to read as follows:

4-11 (b) If an application satisfies the threshold criteria, the
4-12 department shall score and rank the application using a point
4-13 system that:

4-14 (1) prioritizes in descending order criteria
4-15 regarding:

4-16 (A) financial feasibility of the development
4-17 based on the supporting financial data required in the application
4-18 that will include a project underwriting pro forma from the
4-19 permanent or construction lender;

4-20 (B) quantifiable community participation with
4-21 respect to the development, evaluated on the basis of a resolution
4-22 concerning the development that is voted on and adopted by the
4-23 governing body of a municipality [written statements from any
4-24 neighborhood organizations on record with the state or county in
4-25 which the development is to be located and] whose boundaries
4-26 contain the proposed development site or by the commissioners court
4-27 of a county whose boundaries contain the proposed development site;

4-28 (C) the income levels of tenants of the
4-29 development;

4-30 (D) the size and quality of the units;

4-31 (E) the commitment of development funding by
4-32 local political subdivisions;

4-33 (F) ~~[the level of community support for the~~
4-34 ~~application, evaluated on the basis of written statements from the~~
4-35 ~~state representative or the state senator that represents the~~
4-36 ~~district containing the proposed development site;~~

4-37 ~~[(G)]~~ the rent levels of the units;

4-38 (G) ~~[(H)]~~ the cost of the development by square
4-39 foot;

4-40 (H) ~~[(I)]~~ the services to be provided to tenants
4-41 of the development; ~~and]~~

4-42 (I) ~~[(J)]~~ whether, at the time the complete
4-43 application is submitted or at any time within the two-year period
4-44 preceding the date of submission, the proposed development site is
4-45 located in an area declared to be a disaster under Section 418.014;
4-46 and

4-47 (J) quantifiable community participation with
4-48 respect to the development, evaluated on the basis of written
4-49 statements from any neighborhood organizations on record with the
4-50 state or county in which the development is to be located and whose
4-51 boundaries contain the proposed development site;

4-52 (2) uses criteria imposing penalties on applicants or
4-53 affiliates who have requested extensions of department deadlines
4-54 relating to developments supported by housing tax credit
4-55 allocations made in the application round preceding the current
4-56 round or a developer or principal of the applicant that has been
4-57 removed by the lender, equity provider, or limited partners for its
4-58 failure to perform its obligations under the loan documents or
4-59 limited partnership agreement; and

4-60 (3) encourages applicants to provide free notary
4-61 public service to the residents of the developments for which the
4-62 allocation of housing tax credits is requested.

4-63 SECTION 3.04. Subsection (b), Section 2306.6718,
4-64 Government Code, is amended to read as follows:

4-65 (b) The department shall provide the elected officials with
4-66 an opportunity to comment on the application during the application
4-67 evaluation process ~~[provided by Section 2306.6710]~~ and shall
4-68 consider those comments in evaluating applications ~~[under that~~
4-69 ~~section]~~.

5-1 SECTION 3.05. Subsections (a), (b), and (c), Section
5-2 2306.6724, Government Code, are amended to read as follows:

5-3 (a) Regardless of whether the board will adopt the plan
5-4 annually or biennially [Not later than September 30 of each year],
5-5 the department, not later than September 30 of the year preceding
5-6 the year in which the new plan is proposed for use, shall prepare
5-7 and submit to the board for adoption any proposed [the] qualified
5-8 allocation plan required by federal law for use by the department in
5-9 setting criteria and priorities for the allocation of tax credits
5-10 under the low income housing tax credit program.

5-11 (b) Regardless of whether the board has adopted the plan
5-12 annually or biennially, the [The] board shall [adopt and] submit to
5-13 the governor any proposed [the] qualified allocation plan not later
5-14 than November 15 of the year preceding the year in which the new
5-15 plan is proposed for use.

5-16 [The] The governor shall approve, reject, or modify and
5-17 approve the proposed qualified allocation plan not later than
5-18 December 1.

5-19 SECTION 3.06. Subchapter DD, Chapter 2306, Government Code,
5-20 is amended by adding Section 2306.6739 to read as follows:

5-21 Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL
5-22 EMERGENCY FUNDS. (a) To the extent the department receives
5-23 federal emergency funds that must be awarded by the department in
5-24 the same manner as and that are subject to the same limitations as
5-25 awards of housing tax credits, any reference in this chapter to the
5-26 administration of the housing tax credit program applies equally to
5-27 the administration of the federal funds, subject to Subsection (b).

5-28 (b) Notwithstanding any other law, the department may
5-29 establish a separate application procedure for the federal
5-30 emergency funds that does not follow the uniform application cycle
5-31 required by Section 2306.1111 or the deadlines established by
5-32 Section 2306.6724, and any reference in this chapter to an
5-33 application period occurring in relation to those federal emergency
5-34 funds refers to the period beginning on the date the department
5-35 begins accepting applications for the federal funds and continuing
5-36 until all of the available federal funds are awarded.

5-37 ARTICLE 4. MANUFACTURED HOUSING

5-38 SECTION 4.01. Section 2306.6022, Government Code, is
5-39 amended by adding Subsections (e) and (f) to read as follows:

5-40 (e) The division director may allow an authorized employee
5-41 of the division to dismiss a complaint if an investigation
5-42 demonstrates that:

5-43 (1) a violation did not occur; or

5-44 (2) the subject of the complaint is outside the
5-45 division's jurisdiction under this subchapter.

5-46 (f) An employee who dismisses a complaint under Subsection
5-47 (e) shall report the dismissal to the division director and the
5-48 board. The report must include a sufficient explanation of the
5-49 reason the complaint was dismissed.

5-50 SECTION 4.02. Subchapter AA, Chapter 2306, Government Code,
5-51 is amended by adding Section 2306.6023 to read as follows:

5-52 Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE
5-53 DISPUTE RESOLUTION. (a) The division shall develop and implement
5-54 a policy to encourage the use of:

5-55 (1) negotiated rulemaking procedures under Chapter
5-56 2008 for the adoption of division rules; and

5-57 (2) appropriate alternative dispute resolution
5-58 procedures under Chapter 2009 to assist in the resolution of
5-59 internal and external disputes under the division's jurisdiction.

5-60 (b) The division's procedures relating to alternative
5-61 dispute resolution must conform, to the extent possible, to any
5-62 model guidelines issued by the State Office of Administrative
5-63 Hearings for the use of alternative dispute resolution by state
5-64 agencies.

5-65 (c) The division shall:

5-66 (1) coordinate the implementation of the policy
5-67 adopted under Subsection (a);

5-68 (2) provide training as needed to implement the
5-69 procedures for negotiated rulemaking or alternative dispute

6-1 resolution; and

6-2 (3) collect data concerning the effectiveness of those
6-3 procedures.

6-4 SECTION 4.03. Section 1201.003, Occupations Code, is
6-5 amended by amending Subdivision (17) and adding Subdivision (17-a)
6-6 to read as follows:

6-7 (17) "License holder" or "licensee" means a person who
6-8 holds a department-issued license as a manufacturer, retailer,
6-9 broker, ~~[rebuilder,]~~ salesperson, or installer.

6-10 (17-a) "Management official" means an individual with
6-11 authority over employees involved in the sale of manufactured homes
6-12 at a retail location.

6-13 SECTION 4.04. Subsections (a) and (b), Section 1201.055,
6-14 Occupations Code, are amended to read as follows:

6-15 (a) With guidance from the federal Housing and Community
6-16 Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from
6-17 the rules and regulations adopted under the National Manufactured
6-18 Housing Construction and Safety Standards Act of 1974 (42 U.S.C.
6-19 Section 5401 et seq.), the board shall establish fees as follows:

6-20 (1) if the department acts as a design approval
6-21 primary inspection agency, a schedule of fees for the review of
6-22 HUD-code manufactured home blueprints and supporting information,
6-23 to be paid by the manufacturer seeking approval of the blueprints
6-24 and supporting information;

6-25 (2) except as provided by Subsection (e), a fee for the
6-26 inspection of each HUD-code manufactured home manufactured or
6-27 assembled in this state, to be paid by the manufacturer of the home;

6-28 (3) a fee for the inspection of an alteration made to
6-29 the structure or plumbing, heating, or electrical system of a
6-30 HUD-code manufactured home, to be charged on an hourly basis and to
6-31 be paid by the person making the alteration;

6-32 (4) a fee for the inspection of the rebuilding of a
6-33 salvaged manufactured home, to be paid by the retailer ~~[rebuilder]~~;

6-34 (5) a fee for the inspection of a used manufactured
6-35 home to determine whether the home is habitable for the issuance of
6-36 a new statement of ownership and location; and

6-37 (6) a fee for the issuance of a seal for a used mobile
6-38 or HUD-code manufactured home.

6-39 (b) In addition to the fees imposed under Subsections
6-40 (a)(2), (3), and (4), a manufacturer or ~~[r]~~ a person making an
6-41 alteration, ~~[or a rebuilder,]~~ as appropriate, shall be charged for
6-42 the actual cost of travel of a department representative to and
6-43 from:

6-44 (1) the manufacturing facility, for an inspection
6-45 described by Subsection (a)(2); or

6-46 (2) the place of inspection, for an inspection
6-47 described by Subsection (a)(3) or (4).

6-48 SECTION 4.05. Section 1201.056, Occupations Code, is
6-49 amended to read as follows:

6-50 Sec. 1201.056. LICENSE FEES. (a) The board shall
6-51 establish fees for the issuance and renewal of licenses for:

6-52 (1) manufacturers;

6-53 (2) retailers;

6-54 (3) brokers;

6-55 (4) salespersons; and

6-56 (5) ~~[rebuilders, and~~

6-57 ~~[r]]~~ installers.

6-58 (b) The board by rule may establish a fee for reprinting a
6-59 license issued under this chapter.

6-60 SECTION 4.06. Subsections (e) and (f-1), Section 1201.101,
6-61 Occupations Code, are amended to read as follows:

6-62 (e) A person may not repair, rebuild, or otherwise alter a
6-63 salvaged manufactured home unless the person holds a ~~[rebuilder's~~
6-64 ~~or]~~ retailer's license.

6-65 (f-1) A retailer may not be licensed to operate more than
6-66 [at a principal location and] one location ~~[or more branch~~
6-67 ~~locations]~~ under a single license ~~[, provided, however, that a~~
6-68 ~~separate application must be made for each branch, and each branch~~
6-69 ~~must be separately bonded].~~

7-1 SECTION 4.07. Subsections (a) and (b), Section 1201.103,
7-2 Occupations Code, are amended to read as follows:

7-3 (a) An applicant for a license as a manufacturer, retailer,
7-4 broker, [~~rebuilder,~~] or installer must file with the director a
7-5 license application containing:

7-6 (1) the legal name, address, and telephone number of
7-7 the applicant and each person who will be a related person at the
7-8 time the requested license is issued;

7-9 (2) all trade names, and the names of all other
7-10 business organizations, under which the applicant does business
7-11 subject to this chapter, the name of each such business
7-12 organization registered with the secretary of state, and the
7-13 address of such business organization;

7-14 (3) the dates on which the applicant became the owner
7-15 and operator of the business; and

7-16 (4) the location to which the license will apply.

7-17 (b) A license application must be accompanied by:

7-18 (1) proof of the security required by this subchapter;
7-19 [~~and~~]

7-20 (2) payment of the fee required for issuance of the
7-21 license; and

7-22 (3) the information and the cost required under
7-23 Section 1201.1031.

7-24 SECTION 4.08. Subchapter C, Chapter 1201, Occupations Code,
7-25 is amended by adding Section 1201.1031 to read as follows:

7-26 Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION
7-27 REQUIREMENT FOR LICENSE. (a) The department shall require that an
7-28 applicant for a license or renewal of an unexpired license submit a
7-29 complete and legible set of fingerprints, on a form prescribed by
7-30 the board, to the department or to the Department of Public Safety
7-31 for the purpose of obtaining criminal history record information
7-32 from the Department of Public Safety and the Federal Bureau of
7-33 Investigation. The applicant is required to submit a set of
7-34 fingerprints only once under this section unless a replacement set
7-35 is otherwise needed to complete the criminal history check required
7-36 by this section.

7-37 (b) The department shall refuse to issue a license to or
7-38 renew the license of a person who does not comply with the
7-39 requirement of Subsection (a).

7-40 (c) The department shall conduct a criminal history check of
7-41 each applicant for a license or renewal of a license using
7-42 information:

7-43 (1) provided by the individual under this section; and

7-44 (2) made available to the department by the Department
7-45 of Public Safety, the Federal Bureau of Investigation, and any
7-46 other criminal justice agency under Chapter 411, Government Code.

7-47 (d) The department may enter into an agreement with the
7-48 Department of Public Safety to administer a criminal history check
7-49 required under this section.

7-50 (e) The applicant shall pay the cost of a criminal history
7-51 check under this section.

7-52 SECTION 4.09. Section 1201.104, Occupations Code, is
7-53 amended by amending Subsections (a), (g), and (h) and adding
7-54 Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

7-55 (a) Except as provided by Subsection (g) [~~(e)~~], as a
7-56 requirement for a manufacturer's, retailer's, broker's,
7-57 installer's, [~~salvage rebuilder's,~~] or salesperson's license, a
7-58 person who was not licensed or registered with the department or a
7-59 predecessor agency on September 1, 1987, must, not more than 12
7-60 months before applying for the person's first license under this
7-61 chapter, attend and successfully complete eight [~~20~~] hours of
7-62 instruction in the law, including instruction in consumer
7-63 protection regulations.

7-64 (a-1) If the applicant is not an individual, the applicant
7-65 must have at least one related person who satisfies the
7-66 requirements of Subsection (a) [~~meets this requirement~~]. If that
7-67 applicant is applying for a retailer's license, the related person
7-68 must be a management official who satisfies the requirements of
7-69 Subsections (a) and (a-2) at each retail location operated by the

8-1 applicant.

8-2 (a-2) An applicant for a retailer's license must complete
8-3 four hours of specialized instruction relevant to the sale,
8-4 exchange, and lease-purchase of manufactured homes. The
8-5 instruction under this subsection is in addition to the instruction
8-6 required under Subsection (a).

8-7 (a-3) An applicant for an installer's license must complete
8-8 four hours of specialized instruction relevant to the installation
8-9 of manufactured homes. The instruction under this subsection is in
8-10 addition to the instruction required under Subsection (a).

8-11 (a-4) An applicant for a joint installer-retailer license
8-12 must comply with Subsections (a-2) and (a-3), for a total of eight
8-13 hours of specialized instruction. The instruction under this
8-14 subsection is in addition to the instruction required under
8-15 Subsection (a).

8-16 (g) Subsections ~~[Subsection]~~ (a), (a-2), (a-3), and (a-4)
8-17 do ~~[does]~~ not apply to a license holder who applies:

8-18 (1) for a license for an additional business location;
8-19 or

8-20 (2) to renew or reinstate a license.

8-21 (h) An examination must be a requirement of successful
8-22 completion of any initial required course of instruction under this
8-23 section. The period needed to complete an examination under this
8-24 subsection may not be used to satisfy the minimum education
8-25 requirements under Subsection (a), (a-2), (a-3), or (a-4).

8-26 SECTION 4.10. Subsection (a), Section 1201.106,
8-27 Occupations Code, is amended to read as follows:

8-28 (a) An applicant for a license or a license holder shall
8-29 file a bond or other security under Section 1201.105 for the
8-30 issuance or renewal of a license in the following amount:

8-31 (1) \$100,000 for a manufacturer;

8-32 (2) \$50,000 for a retailer ~~[retailer's principal~~
8-33 ~~location];~~

8-34 (3) ~~[\$50,000 for each retailer's branch location;~~

8-35 ~~[(4) \$50,000 for a rebuilder;~~

8-36 ~~[(5)] \$50,000 for a broker; or~~

8-37 (4) ~~[(6)]~~ \$25,000 for an installer.

8-38 SECTION 4.11. Section 1201.110, Occupations Code, is
8-39 amended to read as follows:

8-40 Sec. 1201.110. SECURITY: DURATION. The department shall
8-41 maintain on file a security other than a bond canceled as provided
8-42 by Section 1201.109(a) until the later of:

8-43 (1) the second anniversary of the date the
8-44 manufacturer, retailer, broker, or installer~~[, or rebuilder]~~
8-45 ceases doing business; or

8-46 (2) the date the director determines that a claim does
8-47 not exist against the security.

8-48 SECTION 4.12. Subsection (a), Section 1201.116,
8-49 Occupations Code, is amended to read as follows:

8-50 (a) The department shall renew a license if, before the
8-51 expiration date of the license, the department receives the renewal
8-52 application and payment of the required fee as well as the cost
8-53 required under Section 1201.1031 ~~[before the expiration date of the~~
8-54 ~~license].~~

8-55 SECTION 4.13. Section 1201.303, Occupations Code, is
8-56 amended by amending Subsection (b) and adding Subsections (c)
8-57 through (g) to read as follows:

8-58 (b) The department shall establish an installation
8-59 inspection program in which at least 75 ~~[25]~~ percent of installed
8-60 manufactured homes are inspected on a sample basis for compliance
8-61 with the standards and rules adopted and orders issued by the
8-62 director. The program must place priority on inspecting
8-63 multisection homes and homes installed in Wind Zone II counties.

8-64 (c) On or after January 1, 2015, the director by rule shall
8-65 establish a third-party installation inspection program to
8-66 supplement the inspections of the department if the department is
8-67 not able to inspect at least 75 percent of manufactured homes
8-68 installed in each of the calendar years 2012, 2013, and 2014.

8-69 (d) The third-party installation inspection program

9-1 established under Subsection (c) must:
9-2 (1) establish qualifications for third-party
9-3 inspectors to participate in the program;
9-4 (2) require third-party inspectors to register with
9-5 the department before participating in the program;
9-6 (3) establish a biennial registration and renewal
9-7 process for third-party inspectors;
9-8 (4) require the list of registered third-party
9-9 inspectors to be posted on the department's Internet website;
9-10 (5) establish clear processes governing inspection
9-11 fees and payment to third-party inspectors;
9-12 (6) establish the maximum inspection fee that may be
9-13 charged to a consumer;
9-14 (7) require a third-party inspection to occur not
9-15 later than the 14th day after the date of installation of the
9-16 manufactured home;
9-17 (8) establish a process for a retailer or broker to
9-18 contract, as part of the sale of a new or used manufactured home,
9-19 with an independent third-party inspector to inspect the
9-20 installation of the home;
9-21 (9) establish a process for an installer to schedule
9-22 an inspection for each consumer-to-consumer sale where a home is
9-23 reinstalled;
9-24 (10) if a violation is noted in an inspection, require
9-25 the installer to:
9-26 (A) remedy the violations noted;
9-27 (B) have the home reinspected at the installer's
9-28 expense; and
9-29 (C) certify to the department that all violations
9-30 have been corrected;
9-31 (11) require an inspector to report inspection results
9-32 to the retailer, installer, and the department;
9-33 (12) require all persons receiving inspection results
9-34 under Subdivision (11) to maintain a record of the results at least
9-35 until the end of the installation warranty period;
9-36 (13) authorize the department to charge a filing fee
9-37 and an inspection fee for third-party inspections;
9-38 (14) authorize the department to continue to conduct
9-39 no-charge complaint inspections under Section 1201.355 on request,
9-40 but only after an initial installation inspection is completed;
9-41 (15) establish procedures to revoke the registration
9-42 of inspectors who fail to comply with rules adopted under this
9-43 section; and
9-44 (16) require the department to notify the relevant
9-45 state agency if the department revokes an inspector registration
9-46 based on a violation that is relevant to a license issued to the
9-47 applicable person by another state agency.
9-48 (e) Not later than January 1, 2015, the department shall
9-49 submit to the Legislative Budget Board, the Governor's Office of
9-50 Budget, Planning, and Policy, and the standing committee of each
9-51 house of the legislature having primary jurisdiction over housing a
9-52 report concerning whether the department inspected at least 75
9-53 percent of manufactured homes installed in each of the calendar
9-54 years 2012, 2013, and 2014.
9-55 (f) Not later than December 1, 2015, the director shall
9-56 adopt rules as necessary to implement Subsections (c) and (d) if the
9-57 department did not inspect at least 75 percent of manufactured
9-58 homes installed in each of the calendar years 2012, 2013, and 2014.
9-59 Not later than January 1, 2016, the department shall begin
9-60 registering third-party inspectors under Subsections (c) and (d) if
9-61 the department inspections did not occur as described by this
9-62 subsection.
9-63 (g) If the department is not required to establish a
9-64 third-party installation inspection program as provided by
9-65 Subsection (c), Subsections (c), (d), (e), and (f) and this
9-66 subsection expire September 1, 2016.
9-67 SECTION 4.14. Section 1201.357, Occupations Code, is
9-68 amended by adding Subsection (b-1) to read as follows:
9-69 (b-1) As authorized by Section 1201.6041, the director may

10-1 order a manufacturer, retailer, or installer, as applicable, to pay
 10-2 a refund directly to a consumer as part of an agreed order described
 10-3 by Subsection (b) instead of or in addition to instituting an
 10-4 administrative action under this chapter.

10-5 SECTION 4.15. Subsection (d), Section 1201.461,
 10-6 Occupations Code, is amended to read as follows:

10-7 (d) A person may not sell, convey, or otherwise transfer to
 10-8 a consumer in this state a manufactured home that is salvaged. A
 10-9 salvaged manufactured home may be sold only to a licensed retailer
 10-10 [~~or licensed rebuilder~~].

10-11 SECTION 4.16. Subchapter M, Chapter 1201, Occupations Code,
 10-12 is amended by adding Section 1201.6041 to read as follows:

10-13 Sec. 1201.6041. DIRECT CONSUMER COMPENSATION.

10-14 (a) Instead of requiring a consumer to apply for compensation from
 10-15 the trust fund under Subchapter I, the director may order a
 10-16 manufacturer, retailer, broker, or installer, as applicable, to pay
 10-17 a refund directly to a consumer who sustains actual damages
 10-18 resulting from an unsatisfied claim against a licensed
 10-19 manufacturer, retailer, broker, or installer if the unsatisfied
 10-20 claim results from a violation of:

10-21 (1) this chapter;

10-22 (2) a rule adopted by the director;

10-23 (3) the National Manufactured Housing Construction
 10-24 and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

10-25 (4) a rule or regulation of the United States
 10-26 Department of Housing and Urban Development; or

10-27 (5) Subchapter E, Chapter 17, Business & Commerce
 10-28 Code.

10-29 (b) For purposes of this section, the refund of a consumer's
 10-30 actual damages is determined according to Section 1201.405.

10-31 (c) The director shall prepare information for notifying
 10-32 consumers of the director's option to order a direct refund under
 10-33 this section, shall post the information on the department's
 10-34 Internet website, and shall make printed copies available on
 10-35 request.

10-36 SECTION 4.17. Subsections (a), (b), and (f), Section
 10-37 1201.610, Occupations Code, are amended to read as follows:

10-38 (a) The [~~If the director has reasonable cause to believe~~
 10-39 ~~that a person licensed under this chapter has violated or is about~~
 10-40 ~~to violate any provision of this chapter or rules adopted by the~~
 10-41 ~~department under this chapter, the] director may issue without
 10-42 notice and hearing an order to cease and desist from continuing a
 10-43 particular action or an order to take affirmative action, or both,
 10-44 to enforce compliance with this chapter if the director has
 10-45 reasonable cause to believe that a person has violated or is about
 10-46 to violate any provision of this chapter or a rule adopted under
 10-47 this chapter.~~

10-48 (b) The director may issue an order to any person [~~licensee~~]
 10-49 to cease and desist from violating any law, rule, or written
 10-50 agreement or to take corrective action with respect to any such
 10-51 violations if the violations in any way are related to the sale,
 10-52 financing, or installation of a manufactured home or the providing
 10-53 of goods or services in connection with the sale, financing, or
 10-54 installation of a manufactured home unless the matter that is the
 10-55 basis of such violation is expressly subject to inspection and
 10-56 regulation by another state agency; provided, however, that if any
 10-57 matter involves a law that is subject to any other administration or
 10-58 interpretation by another agency, the director shall consult with
 10-59 the person in charge of the day-to-day administration of that
 10-60 agency before issuing an order.

10-61 (f) If a person licensed under this chapter fails to pay an
 10-62 administrative penalty that has become final or fails to comply
 10-63 with an order of the director that has become final, in addition to
 10-64 any other remedy provided by law, the director, after not less than
 10-65 10 days' notice to the person, may without a prior hearing suspend
 10-66 the person's license. The suspension shall continue until the
 10-67 person has complied with the cease and desist order or paid the
 10-68 administrative penalty. During the period of suspension, the
 10-69 person may not perform any act requiring a license under this

11-1 chapter, and all compensation received by the person during the
 11-2 period of suspension is subject to forfeiture to the person from
 11-3 whom it was received.

11-4 SECTION 4.18. Section 1302.061, Occupations Code, is
 11-5 amended to read as follows:

11-6 Sec. 1302.061. MANUFACTURED HOMES. This chapter does not
 11-7 apply to a person or entity licensed as a manufacturer, retailer,
 11-8 [~~rebuilder,~~] or installer under Chapter 1201 and engaged
 11-9 exclusively in air conditioning and refrigeration contracting for
 11-10 manufactured homes if the installation of air conditioning
 11-11 components at the site where the home will be occupied is performed
 11-12 by a person licensed under this chapter.

11-13 ARTICLE 5. REPEALER

11-14 SECTION 5.01. Subsection (f), Section 2306.6710,
 11-15 Government Code, is repealed.

11-16 ARTICLE 6. TRANSITION PROVISIONS

11-17 SECTION 6.01. (a) Not later than March 1, 2012, the Texas
 11-18 Department of Housing and Community Affairs shall develop the plan
 11-19 required under Section 2306.531, Government Code, as added by this
 11-20 Act.

11-21 (b) Not later than May 1, 2012, the Texas Department of
 11-22 Housing and Community Affairs shall obtain the governor's approval
 11-23 of the plan developed under Section 2306.531, Government Code, as
 11-24 added by this Act.

11-25 (c) Not later than May 1, 2012, the governor shall designate
 11-26 a state agency to be the primary agency in charge of coordinating
 11-27 the distribution of long-term disaster recovery funding as required
 11-28 under Section 2306.531, Government Code, as added by this Act.

11-29 SECTION 6.02. The change in law made by this Act to Sections
 11-30 2306.043, 2306.044, 2306.045, 2306.046, and 2306.049, Government
 11-31 Code, applies only to a violation committed on or after the
 11-32 effective date of this Act. A violation committed before the
 11-33 effective date of this Act is governed by the law in effect when the
 11-34 violation was committed, and the former law is continued in effect
 11-35 for that purpose.

11-36 SECTION 6.03. The change in law made by this Act to Section
 11-37 2306.6022, Government Code, applies only to a complaint filed on or
 11-38 after the effective date of this Act. A complaint filed before the
 11-39 effective date of this Act is governed by the law in effect at the
 11-40 time the complaint was filed, and the former law is continued in
 11-41 effect for that purpose.

11-42 SECTION 6.04. The changes in law made by this Act to
 11-43 Sections 2306.6710 and 2306.6718, Government Code, apply only to an
 11-44 application for low income housing tax credits that is submitted to
 11-45 the Texas Department of Housing and Community Affairs during an
 11-46 application cycle that begins on or after the effective date of this
 11-47 Act. An application that is submitted during an application cycle
 11-48 that began before the effective date of this Act is governed by the
 11-49 law in effect at the time the application cycle began, and the
 11-50 former law is continued in effect for that purpose.

11-51 SECTION 6.05. Notwithstanding Subsection (f-1), Section
 11-52 1201.101, and Subsection (a), Section 1201.106, Occupations Code,
 11-53 as amended by this Act, a retailer licensed to operate one or more
 11-54 branch locations on or before the effective date of this Act is not
 11-55 required to comply with the changes in law made by those sections
 11-56 until March 1, 2012.

11-57 SECTION 6.06. (a) The change in law made by this Act in
 11-58 amending Sections 1201.103 and 1201.104, Occupations Code, applies
 11-59 only to an application for a license filed with the executive
 11-60 director of the manufactured housing division of the Texas
 11-61 Department of Housing and Community Affairs on or after the
 11-62 effective date of this Act. An application for a license filed
 11-63 before that date is governed by the law in effect on the date the
 11-64 application was filed, and the former law is continued in effect for
 11-65 that purpose.

11-66 (b) The change in law made by this Act in adding Section
 11-67 1201.1031, Occupations Code, applies only to an application for a
 11-68 license or license renewal filed with the executive director of the
 11-69 manufactured housing division of the Texas Department of Housing

12-1 and Community Affairs on or after the effective date of this Act.
12-2 An application for a license or license renewal filed before that
12-3 date is governed by the law in effect on the date the application
12-4 was filed, and the former law is continued in effect for that
12-5 purpose.

12-6 (c) The change in law made by this Act in amending Section
12-7 1201.116, Occupations Code, applies only to an application for a
12-8 license renewal filed with the executive director of the
12-9 manufactured housing division of the Texas Department of Housing
12-10 and Community Affairs on or after the effective date of this Act.
12-11 An application for a license renewal filed before that date is
12-12 governed by the law in effect on the date the application was filed,
12-13 and the former law is continued in effect for that purpose.

12-14 ARTICLE 7. EFFECTIVE DATE

12-15 SECTION 7.01. This Act takes effect September 1, 2011.

12-16 * * * * *