

BILL ANALYSIS

Senate Research Center

H.B. 2608
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Government Organization
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Housing and Community Affairs (TDHCA) works to ensure the availability of affordable single and multi-family housing, provides funding for community-based support services, and regulates the manufactured housing industry. Over the last several years, TDHCA has also helped funnel billions of dollars of federal aid to help Texas recover from hurricanes and the economic downturn.

TDHCA is subject to the Sunset Act and will be abolished September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission concluded that Texas has an ongoing need for the functions of TDHCA, particularly in disbursing federal funds, but that changes are needed to improve the agency's efficiency.

H.B. 2608 amends current law relating to the continuation and functions of the Texas Department of Housing and Community Affairs.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the governing board of the Texas Department of Housing and Community Affairs (TDHCA) is modified in SECTION 1.07 (Section 2306.0504, Government Code) of this bill.

Rulemaking authority is expressly granted to the Manufactured Housing Board within TDHCA in SECTION 4.05 (Section 1201.056, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the director of the manufactured housing division of TDHCA in SECTION 4.13 (Section 1201.303, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SECTION 1. Amends Section 2306.022, Government Code, to provide that the Texas Department of Housing and Community Affairs (TDHCA) is subject to Chapter 325 (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, TDHCA is abolished and this chapter expires September 1, 2023, rather than September 1, 2011.

SECTION 1.02. Amends Section 2306.043(c), Government Code, as follows:

(c) Requires the notice of violation to:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing before the State Office of Administrative Hearings (SOAH), rather than board, on the occurrence of the violation, the amount of the penalty, or both.

SECTION 1.03. Amends Section 2306.044(a), Government Code, to make a conforming change.

SECTION 1.04. Amends Section 2306.045, Government Code, as follows:

Sec. 2306.045. HEARING. (a) Requires the executive director of TDHCA if the person requests a hearing before the SOAH or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person. Makes a conforming change.

(b) Requires SOAH to:

(1) hold the hearing;

(2) make findings of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty; and

(3) issue a proposal for decision regarding the penalty and provide notice of the proposal to the governing board of TDHCA (board).

(c) Provides that any administrative proceedings relating to the imposition of a penalty under Section 2306.041 (Imposition of Penalty) is a contested case under Chapter 2001 (Administrative Procedure).

SECTION 1.05. Amends Section 2306.046(a), Government Code, as follows:

(a) Requires the board to issue an order after receiving a proposal for decision from SOAH under Section 2306.045 (Hearing). Deletes existing text authorizing the board, based on the findings of fact and conclusions of law, to find that a violation occurred and impose a penalty, or find that a violation did not occur.

SECTION 1.06. Amends Section 2306.049(a), Government Code, to provide that a judicial review of a board order imposing an administrative penalty is under the substantial evidence rule, rather than by trial de novo.

SECTION 1.07. Transfers Section 2306.6721, Government Code, to Subchapter B, Chapter 2306, Government Code, redesignates it as Section 2306.0504, Government Code, and amends it as follows:

Sec. 2306.0504 . DEBARMENT FROM PROGRAM PARTICIPATION. (a) Requires the board by rule to adopt a policy providing for the debarment of a person from participation in programs administered by TDHCA, rather than adopt a policy providing for the debarment of a person from participating in the low income housing tax credit program as described by this section.

(b) Authorizes TDHCA to debar a person from participation in a TDHCA program on the basis of the person's past failure to comply with any condition imposed by TDHCA in the administration of its programs, rather than failure to comply with any condition imposed by TDHCA in connection with the allocation of housing tax credits.

(c) Requires TDHCA to debar a person from participation in a TDHCA program if the person:

(1) materially or repeatedly violates any condition imposed by TDHCA in connection with the administration of a TDHCA program, including a material or repeated violation of a land use restriction agreement regarding a development supported with a housing tax credit allocation, rather than

materially violates any condition imposed by TDHCA in connection with the allocation of housing tax credits; or

(2) is debarred from participation in federal housing programs by the United States Department of Housing and Urban Development.

Deletes existing text requiring TDHCA to debar a person if the person is in material noncompliance with or has repeatedly violated a land use restriction agreement regarding a development supported with a housing tax credit allocation.

(d) Authorizes a person debarred by TDHCA from participation in a TDHCA program to appeal the person's debarment to the board.

SECTION 1.08. Amends Subchapter H, Chapter 2306, Government Code, by adding Section 2306.1875, as follows:

Sec. 2306.1875. ENERGY EFFICIENCY MEASURES: MANDATORY DISCLOSURE AND TRAINING. (a) Requires an energy service provider that, in connection with the provision of any energy conservation and efficiency measures required under Section 2306.187 (Energy Efficiency Standards for Certain Single and Multifamily Dwellings) or in connection with the provision of weatherization measures under a program described by Section 2306.097 (Energy Services Program for Low-Income Individuals) or another program administered by TDHCA, recommends any energy efficiency measure, including a weatherization measure, to a consumer to provide to the consumer a written disclosure regarding whether the provider receives or has received any financial or other benefit from recommending energy efficiency measures to consumers. Requires that the disclosure specify any particular energy efficiency measure with respect to which the provider receives or has received a financial or other benefit, regardless of whether the provider makes a specific recommendation regarding that measure to the consumer.

(b) Requires each person who performs state-funded or federally funded energy or green facility audits, energy code inspections, energy performance testing, or other energy efficiency or green analyses or evaluations of single-family or multifamily dwellings in connection with the provision of any energy conservation and efficiency measures or weatherization measures described by Subsection (a) or who awards energy ratings with respect to the provision of those measures to be an independent third party without any direct or indirect financial or other interest in the services performed, other than direct compensation for those services.

(c) Entitles each person providing services described by Subsection (b) to independently inspect, test, and analyze building systems and equipment to evaluate factors relating to energy efficiency, energy usage, or carbon emissions or other factors in order to determine the appropriate energy or green conservation measures or improvements or to make other related recommendations or perform other related actions.

(d) Requires each person providing services described by Subsection (b) to complete appropriate training from a training organization that is approved by TDHCA and that is accredited by an industry organization or a state or federal governmental entity that has written standards, an ethics policy, and an industry-acceptable quality control policy and process.

ARTICLE 2. DISASTER MANAGEMENT PLANNING

SECTION 2.01. Amends Section 418.106, Government Code, by adding Subsection (b-1), as follows:

(b-1) Requires that the plan identify:

- (1) any requirements or procedures that local agencies and officials must satisfy or implement to qualify for long-term federal disaster recovery funding, prepare for long-term disaster recovery; and
- (2) any appropriate state or local resources available to assist the local agencies and officials in satisfying or implementing those requirements or procedures.

SECTION 2.02. Amends Chapter 2306, Government Code, by adding Subchapter X-1, as follows:

SUBCHAPTER X-1. LONG-TERM DISASTER RECOVERY PLAN

Sec. 2306.531. LONG-TERM DISASTER RECOVERY PLAN. (a) Requires TDHCA, in consultation with the Texas Department of Rural Affairs (TDRA) and the office of the governor, to develop a long-term disaster recovery plan to administer money received for disaster recovery from the federal government or any other source.

(b) Provides that, in developing and administering the plan:

- (1) TDHCA has primary responsibility over matters related to housing; and is required to consult with existing disaster recovery entities established by law or local, state, or federal agreements, local government officials, contractors, community advocates, businesses, nonprofit organizations, and other stakeholders, and the United States Department of Housing and Urban Development to ensure that the plan complies with federal law; and
- (2) TDRA has primary responsibility over matters related to infrastructure; and is required to consult with existing disaster recovery entities established by law or local, state, or federal agreements, and local government officials, contractors, community advocates, businesses, nonprofit organizations, and other stakeholders.

(c) Requires that the plan developed under this section establish or identify:

- (1) a method of distribution of disaster relief funding to local areas, subject to modification by the governor based on the nature of the disaster;
- (2) guidelines for outreach to program applicants and for eligible housing and infrastructure activities;
- (3) eligibility criteria for program applicants;
- (4) housing quality standards;
- (5) priorities for serving local populations;
- (6) procedures for establishing compliance with federal requirements;
- (7) procedures for coordination and communication among federal, state, and local entities;
- (8) pre-disaster and post-disaster training programs;
- (9) a procedure for each department to compile, update, and post on that department's Internet website in advance of hurricane season all relevant forms and information for program applicants;

(10) federal and state monitoring and reporting requirements, including a list of the types of data that local government officials may be required to collect, analyze, and report;

(11) the state information technology systems and processes that will be used to administer funds from the federal government or any other source;

(12) a process for identifying elements of disaster recovery where coordination between or among state agencies will be required; and

(13) a process for implementing memoranda of understanding in areas of disaster recovery where interagency coordination will be required.

(d) Requires TDHCA and TDRA, in developing the plan under this section, to seek from county judges and mayors in areas impacted by large-scale natural disasters input regarding the development of future methods of distributing federal funding for long-term disaster recovery.

(e) Requires that the plan established under this section be updated biennially and approved by the governor.

(f) Requires the governor, biennially, to designate a state agency to be the primary agency in charge of coordinating the distribution of long-term disaster recovery funding.

ARTICLE 3. HOUSING TRUST FUND PROGRAM; LOW INCOME HOUSING TAX CREDIT PROGRAM

SECTION 3.01. Amends Sections 2306.111(d-1) and (d-2), Government Code, as follows:

(d-1) Requires TDHCA, in allocating low income housing tax credit commitments under Subchapter DD (Low Income Housing Tax Credit Program), to, before applying the regional allocation formula prescribed by Section 2306.1115 (Regional Allocation Formula), set aside for at-risk developments, as defined by Section 2306.6702 (Definition), not less than the minimum amount of housing tax credits required under Section 2306.6714 (At-Risk Development Set-Aside). Provides that funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if:

(1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law and each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program;

(2) the funds or credits are allocated by TDHCA primarily to serve persons with disabilities; or

(3) the funds are housing trust funds administered by TDHCA under Sections 2306.201-2306.206 that are not otherwise required to be set aside under state or federal law and do not exceed \$3 million for each programmed activity during each application cycle, rather than do not exceed \$3 million during each application cycle.

(d-2) Requires TDHCA, in allocating low income housing tax credit commitments under Subchapter DD, to allocate five percent of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Requires any funds allocated to developments under this subsection that involve rehabilitation to come from the funds set aside for at-risk developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1). Provides that this

subsection does not apply to a development financed wholly or partly under Section 538 of the Housing Act of 1949 (42 U.S.C. Section 1490p-2) unless the development involves the rehabilitation of an existing property that has received and will continue to receive as part of the financing of the development federal financial assistance provided under Section 515 of the Housing Act of 1949 (42 U.S.C. Section 1485).

SECTION 3.02. Amends Section 2306.67022, Government Code, as follows:

Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. Requires the board, at least biennially, rather than annually, to adopt a qualified allocation plan and a corresponding manual to provide information regarding the administration of and eligibility for the low income housing tax credit program. Authorizes the board to adopt the plan and manual annually, as considered appropriate by the board.

SECTION 3.03. Amends Sections 2306.6711(b) and (f), Government Code, as follows:

(b) Requires the board, not later than the deadline specified in the qualified allocation plan, to issue commitments for available housing tax credits based on the application evaluation process provided by Section 2306.6710 (Evaluation and Underwriting of Applications). Prohibits the board from allocating to an applicant housing tax credits in any unnecessary amount, as determined by TDHCA's underwriting policy and by federal law, and in any event may not allocate to the applicant housing tax credits in an amount greater than \$3 million, rather than \$2 million, in a single application round.

(f) Authorizes the board to allocate housing tax credits to more than one development in a single community, as defined by TDHCA rule, in the same calendar year only if the developments are or will be located more than two linear miles, rather than one linear miles, apart. Provides that this subsection applies only to communities contained within counties with populations exceeding one million. Makes a nonsubstantive change.

SECTION 3.04. Amends Sections 2306.6724(a), (b), and (c), Government Code, as follows:

(a) Requires TDHCA, not later than September 30 of the year preceding the year in which the new plan is proposed for use, regardless of whether the board will adopt the plan annually or biennially, rather than not later than September 30 of each year, to prepare and submit to the board for adoption any proposed qualified allocation plan required by federal law for use by the department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program. Makes a nonsubstantive change.

(b) Requires the board, regardless of whether the board has adopted the plan annually or biennially, to submit to the governor any proposed qualified allocation plan not later than November 15 of the year preceding the year in which the new plan is proposed for use. Requires the governor to approve, reject, or modify and approve the proposed qualified allocation plan not later than December 1. Deletes existing text requiring the board to adopt and submit the qualified allocation plan not later than November 15. Deletes existing Subsection (c) designation.

SECTION 3.05. Amends Section 2306.6725, Government Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Requires TDHCA to provide appropriate incentives as determined through the qualified allocation plan to reward applicants who:

(1) on the date an application round begins, are doing business in this state for purposes of Chapter 171 (Franchise Tax), Tax Code;

(2) using financing or other assistance from TDHCA, have developed and completed at least 150 units of comparable housing if the proposed project is

located in a rural area, or at least 350 units of comparable housing if the proposed project is located in an area other than a rural area; and

(3) in the five-year period preceding the date the application round begins, have not had any instances of material noncompliance with respect to a project for which TDHCA provided financing or other assistance.

(b-2) Requires TDHCA, if points are awarded to an application under Subsection (b-1), to increase the points awarded under Section 2306.6710(b)(1)(F) by the amount of points awarded under Subsection (b-1).

SECTION 3.06. Amends Subchapter DD, Chapter 2306, Government Code, by adding Section 2306.6739, as follows:

Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL EMERGENCY FUNDS. (a) Provides that to the extent TDHCA receives federal emergency funds that must be awarded by TDHCA in the same manner as and that are subject to the same limitations as awards of housing tax credits, any reference in this chapter to the administration of the housing tax credit program applies equally to the administration of the federal funds, subject to Subsection (b).

(b) Authorizes TDHCA, notwithstanding any other law, to establish a separate application procedure for the federal emergency funds that does not follow the uniform application cycle required by Section 2306.1111 (Uniform Application and Funding Cycles) or the deadlines established by Section 2306.6724 (Deadlines for Allocation of Low Income Housing Tax Credits), and provides that any reference in this chapter to an application period occurring in relation to those federal emergency funds refers to the period beginning on the date TDHCA begins accepting applications for the federal funds and continuing until all of the available federal funds are awarded.

ARTICLE 4. MANUFACTURED HOUSING

SECTION 4.01. Amends Section 2306.6022, Government Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes the director of the manufactured housing division of TDHCA (division; division director) to allow an authorized employee of the division to dismiss a complaint if an investigation demonstrates that a violation did not occur, or the subject of the complaint is outside the division's jurisdiction under this subchapter.

(f) Requires an employee who dismisses a complaint under Subsection (e) to report the dismissal to the division director and the board. Requires that the report include a sufficient explanation of the reason the complaint was dismissed.

SECTION 4.02. Amends Subchapter AA, Chapter 2306, Government Code, by adding Section 2306.6023, as follows:

Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the division to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of division rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under the division's jurisdiction.

(b) Requires the division's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the SOAH for the use of alternative dispute resolution by state agencies.

(c) Requires the division to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

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

SECTION 4.03. Amends Section 1201.003, Occupations Code, by amending Subdivision (17) and adding Subdivision (17-a), to redefine, in this section, "license holder" or "licensee" and redefine "management official."

SECTION 4.04. Amends Sections 1201.055(a) and (b), Occupations Code, as follows:

(a) Requires the manufactured housing board within TDHCA (manufactured housing board), with guidance from the federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), to establish fees as follows:

(1)-(3) Makes no changes to these subdivisions.

(4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the retailer, rather than by the rebuilder; and

(5)-(6) Makes no changes to these subdivisions.

(b) Makes a conforming change.

SECTION 4.05. Amends Section 1201.056, Occupations Code, as follows:

Sec. 1201.056. LICENSE FEES. (a) Creates this subsection from existing text. Requires the manufactured housing board to establish fees for the issuance and renewal of licenses for manufacturers, retailers, brokers, salespersons, and installers. Deletes existing text requiring the manufactured housing board to establish fees for the issuance and renewal of licenses for rebuilders.

(b) Authorizes the manufactured housing board by rule to establish a fee for reprinting a license issued under this chapter.

SECTION 4.06. Amends Sections 1201.101(e) and (f-1), Occupations Code, as follows:

(e) Prohibits a person from repairing, rebuilding, or otherwise altering a salvaged manufactured home unless the person holds a retailer's license, rather than a rebuilder's or retailer's license.

(f-1) Prohibits a retailer from being licensed to operate more than location under a single license. Deletes existing text authorizing a retailer to be licensed to operate at a principal location and one or more branch locations under a single license; provided, however, that a separate application must be made for each branch, and each branch must be separately bonded.

SECTION 4.07. Amends Sections 1201.103(a) and (b), Occupations Code, as follows:

(a) Requires an applicant for a license as a manufacturer, retailer, broker, or installer to file with the director a license application containing:

- (1) the legal name, address, and telephone number of the applicant and each person who will be a related person at the time the requested license is issued;
- (2) all trade names, and the names of all other business organizations, under which the applicant does business subject to this chapter, the name of each such business organization registered with the secretary of state, and the address of such business organization;
- (3) the dates on which the applicant became the owner and operator of the business; and
- (4) the location to which the license will apply.

Makes a conforming and nonsubstantive change.

(b) Requires that a license application be accompanied by:

- (1) proof of the security required by this subchapter;
- (2) payment of the fee required for issuance of the license; and
- (3) the information and the cost required under Section 1201.1031.

SECTION 4.08. Amends Subchapter C, Chapter 1201, Occupations Code, by adding Section 1201.1031, as follows:

Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) Requires TDHCA to require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the manufactured housing board, to TDHCA or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). Provides that the applicant is required to submit a set of fingerprints only once under this section unless a replacement set is otherwise needed to complete the criminal history check required by this section.

(b) Requires TDHCA to refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Requires TDHCA to conduct a criminal history check of each applicant for a license or renewal of a license using information:

- (1) provided by the individual under this section; and
- (2) made available to TDHCA by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TDHCA to enter into an agreement with DPS to administer a criminal history check required under this section.

(e) Requires the applicant to pay the cost of a criminal history check under this section.

SECTION 4.09. Amends Section 1201.104, Occupations Code, by amending Subsections (a), (g), and (h) and adding Subsections (a-1), (a-2), (a-3), and (a-4), as follows:

(a) Requires a person who was not licensed or registered with TDHCA or a predecessor agency on September 1, 1987, except as provided by Subsection (g), rather than

Subsection (e), as a requirement for a manufacturer's, retailer's, broker's, installer's, or salesperson's license, to, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete eight, rather than 20, hours of instruction in the law, including instruction in consumer protection regulations.

(a-1) Requires the applicant, if the applicant is not an individual, to have at least one related person who satisfies the requirements of Subsection (a), rather than at least one related person who meets this requirement. Requires the related person, if that applicant is applying for a retailer's license, to be a management official who satisfies the requirements of Subsections (a) and (a-2) at each retail location operated by the applicant.

(a-2) Requires an applicant for a retailer's license to complete four hours of specialized instruction relevant to the sale, exchange, and lease-purchase of manufactured homes. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-3) Requires an applicant for an installer's license to complete four hours of specialized instruction relevant to the installation of manufactured homes. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-4) Requires an applicant for a joint installer-retailer license to comply with Subsections (a-2) and (a-3), for a total of eight hours of specialized instruction. Provides that the instruction under this subsection is in addition to the instruction required under Subsection (a).

(g) Provides that Subsections (a), (a-2), (a-3), and (a-4) do not apply to a license holder who applies for a license for an additional business location, or to renew or reinstate a license. Makes a nonsubstantive change.

(h) Requires that an examination be a requirement of successful completion of any initial required course of instruction under this section. Prohibits the period needed to complete an examination under this subsection from being used to satisfy the minimum education requirements under Subsection (a), (a-2), (a-3), or (a-4).

SECTION 4.10. Amends Section 1201.106(a), Occupations Code, as follows:

(a) Requires an applicant for a license or a license holder to file a bond or other security under Section 1201.105 (Security Required) for the issuance or renewal of a license in the following amount:

- (1) \$100,000 for a manufacturer;
- (2) \$50,000 for a retailer, rather than for a retailer's principal location;
- (3) \$50,000 for a broker; or
- (4) \$25,000 for an installer.

Deletes existing text requiring an applicant for a license to file a bond for the issuance or renewal of a license for \$50,000 for each retailer's branch location or \$50,000 for a rebuilder. Makes nonsubstantive changes.

SECTION 4.11. Amends Section 1201.110, Occupations Code, as follows:

Sec. 1201.110. SECURITY: DURATION. Requires TDHCA to maintain on file a security other than a bond canceled as provided by Section 1201.109(a) (relating to license suspension dates) until the later of:

(1) the second anniversary of the date the manufacturer, retailer, broker, or installer ceases doing business; or

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

SECTION 4.12. Amends Section 1201.116(a), Occupations Code, to require TDHCA to renew a license if, before the expiration date of the license, TDHCA receives the renewal application and payment of the required fee as well as the cost required under Section 1201.1031, rather than before the expiration date of the license.

SECTION 4.13. Amends Section 1201.303, Occupations Code, amending Subsection (b) and adding Subsections (c), (d), (e), (f), and (g), as follows:

(b) Requires TDHCA to establish an installation inspection program in which at least 75, rather than 25, percent of installed manufactured homes are inspected on a sample basis for compliance with the standards and rules adopted and orders issued by the director. Requires that the program place priority on inspecting multisection homes and homes installed in Wind Zone II counties.

(c) Requires the division director by rule, on or after January 1, 2015, to establish a third-party installation inspection program to supplement the inspections of TDHCA if TDHCA is not able to inspect at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014.

(d) Requires the third-party installation inspection program established under Subsection (c) to:

(1) establish qualifications for third-party inspectors to participate in the program;

(2) require third-party inspectors to register with TDHCA before participating in the program;

(3) establish a biennial registration and renewal process for third-party inspectors;

(4) require the list of registered third-party inspectors to be posted on TDHCA's Internet website;

(5) establish clear processes governing inspection fees and payment to third-party inspectors;

(6) establish the maximum inspection fee that may be charged to a consumer;

(7) require a third-party inspection to occur not later than the 14th day after the date of installation of the manufactured home;

(8) establish a process for a retailer or broker to contract, as part of the sale of a new or used manufactured home, with an independent third-party inspector to inspect the installation of the home;

(9) establish a process for an installer to schedule an inspection for each consumer-to-consumer sale where a home is reinstalled;

(10) if a violation is noted in an inspection, require the installer to remedy the violations noted, have the home reinspected at the installer's expense, and certify to TDHCA that all violations have been corrected;

(11) require an inspector to report inspection results to the retailer, installer, and TDHCA;

(12) require all persons receiving inspection results under Subdivision (11) to maintain a record of the results at least until the end of the installation warranty period;

(13) authorize TDHCA to charge a filing fee and an inspection fee for third-party inspections;

(14) authorize TDHCA to continue to conduct no-charge complaint inspections under Section 1201.355 (Consumer Complaint Home Inspection) on request, but only after an initial installation inspection is completed;

(15) establish procedures to revoke the registration of inspectors who fail to comply with rules adopted under this section; and

(16) require TDHCA to notify the relevant state agency if TDHCA revokes an inspector registration based on a violation that is relevant to a license issued to the applicable person by another state agency.

(e) Requires TDHCA, not later than January 1, 2015, to submit to the Legislative Budget Board (LBB), the Governor's Office of Budget, Planning, and Policy, and the standing committee of each house of the legislature having primary jurisdiction over housing a report concerning whether TDHCA inspected at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014.

(f) Requires the division director, not later than December 1, 2015, to adopt rules as necessary to implement Subsections (c) and (d) if TDHCA did not inspect at least 75 percent of manufactured homes installed in each of the calendar years 2012, 2013, and 2014. Requires TDHCA, not later than January 1, 2016, to begin registering third-party inspectors under Subsections (c) and (d) if TDHCA inspections did not occur as described by this subsection.

(g) Provides that if TDHCA is not required to establish a third-party installation inspection program as provided by Subsection (c), Subsections (c), (d), (e), and (f) and this subsection expire September 1, 2016.

SECTION 4.14. Amends Section 1201.357, Occupations Code, by adding Subsection (b-1), to authorize the division director, as authorized by Section 1201.6041, to order a manufacturer, retailer, or installer, as applicable, to pay a refund directly to a consumer as part of an agreed order described by Subsection (b) instead of or in addition to instituting an administrative action under this chapter.

SECTION 4.15. Amends Section 1201.461(d), Occupations Code, as follows:

(d) Prohibits a person from selling, conveying, or otherwise transferring to a consumer in this state a manufactured home that is salvaged. Provides that a salvaged manufactured home may be sold only to a licensed retailer, rather than to a licensed retailer or a licensed rebuilder.

SECTION 4.16. Amends Subchapter M, Chapter 1201, Occupations Code, by adding Section 1201.6041, as follows:

Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Authorizes the division director to order a manufacturer, retailer, broker, or installer, as applicable, to pay a refund directly to 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 a violation of:

- (1) this chapter;
- (2) a rule adopted by the division director;
- (3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);
- (4) a rule or regulation of the United States Department of Housing and Urban Development; or
- (5) Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), Business & Commerce Code.

(b) Provides that, for purposes of this section, the refund of a consumer's actual damages is determined according to Section 1201.405 (Limitations on Claims).

(c) Requires the division director to prepare information for notifying consumers of the division director's option to order a direct refund under this section, to post the information on TDHCA's Internet website, and to make printed copies available on request.

SECTION 4.17. Amends Sections 1201.610(a), (b), and (f), Occupations Code, as follows:

(a) Authorizes the division director to issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter if the division director has reasonable cause to believe that a person has violated or is about to violate any provision of this chapter or a rule adopted under this chapter. Deletes existing text authorizing the division director to issue a cease and desist order if the division director has reasonable cause to believe that a person licensed under this chapter has violated or is about to violate any provision of this chapter or rules adopted by TDHCA under this chapter.

(b) Authorizes the division director to issue an order to any person, rather than licensee, to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to any such violations if the violations in any way are related to the sale, financing, or installation of a manufactured home or the providing of goods or services in connection with the sale, financing, or installation of a manufactured home unless the matter that is the basis of such violation is expressly subject to inspection and regulation by another state agency; provided, however, that if any matter involves a law that is subject to any other administration or interpretation by another agency, the division director is required to consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(f) Provides that if a person licensed under this chapter fails to pay an administrative penalty that has become final or fails to comply with an order of the division director that has become final, in addition to any other remedy provided by law, the division director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. Requires the suspension to continue until the person has complied with the cease and desist order or paid the administrative penalty. Provides that during the period of suspension, the person may not perform any act requiring a license under this chapter, and all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom it was received.

SECTION 4.18. Amends Section 1302.061, Occupations Code, to make a conforming change.

ARTICLE 5. TRANSITION PROVISIONS

SECTION 5.01. (a) Requires TDHCA, not later than March 1, 2012, to develop the plan required under Section 2306.531, Government Code, as added by this Act.

(b) Requires TDHCA, not later than May 1, 2012, to obtain the governor's approval of the plan developed under Section 2306.531, Government Code, as added by this Act.

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

SECTION 5.02. Makes application of Sections 2306.043, 2306.044, 2306.045, 2306.046, and 2306.049, Government Code, prospective.

SECTION 5.03. Makes application of Section 2306.1875, Government Code, prospective.

SECTION 5.04. Makes application of Section 2306.6022, Government Code, prospective.

SECTION 5.05. Makes application of Sections 2306.6711 and 2306.6725, Government Code, prospective.

SECTION 5.06. Provides that, notwithstanding Sections 1201.101(f-1) and 1201.106(a), Occupations Code, as amended by this Act, a retailer licensed to operate one or more branch locations on or before the effective date of this Act is not required to comply with the changes in law made by those sections until March 1, 2012.

SECTION 5.07. (a) Makes application of Sections 1201.103 and 1201.104, Occupations Code, prospective.

(b) Makes application of Section 1201.1031, Occupations Code, prospective.

(c) Makes application of Section 1201.116, Occupations Code, prospective.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. (a) Effective date, except as provided by Subsection (b): September 1, 2011.

(b) Effective date, Section 2306.1875, Government Code: April 1, 2012.