

- SUBJECT:** Revising regulation of manufactured homes
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 7 ayes — Flores, Goolsby, Hamilton, Homer, D. Jones, Morrison, Quintanilla
- 0 nays
- 2 absent — Geren, Chisum
- WITNESSES:** For — Jody Anderson, Texas Manufactured Housing Association
- Against — Luanne Caraway, Rovin Garrett, Tax Assessor Collectors Association of Texas
- BACKGROUND:** The Texas Manufactured Housing Standards Act (Occupations Code, ch. 1201) regulates the construction and installation of manufactured housing, requires registration of manufacturers and sellers of manufactured housing, and provides certain rules for those registrants and their activities. The manufactured housing division of the Texas Department of Housing and Community Affairs (TDHCA) administers the act.
- DIGEST:** CSHB 2438 would make various changes to the code regulating manufactured housing.
- Restrictions on personal property tax lien.** A tax lien against a manufactured home would not be enforceable unless it was recorded with TDHCA prior to October 1, 2005, or within six months of the end of the year for which the tax was owed. The bill would remove language prohibiting the collection of taxes incurred prior to 2001 that had not been filed with the department. The bill would delete the requirement that a person have a statement from the county in which the home is located stating that no unpaid ad valorem taxes had been reported on the home in order to receive a permit to move a manufactured home.
- Warranties.** The bill would require the division to investigate an assertion by a manufacturer or retailer that, due to an action of the consumer, it was

unable to provide the warranty service ordered by TDHCA following its consumer-complaint home inspection. If the investigation determined that the allegation was credible, a new order for corrective action would have to be issued to both the consumer and the manufacturer or retailer. If the consumer refused to comply with the new order, the manufacturer or retailer would be discharged from the obligations of the order, have no liability to the consumer, and would not be subject to an action by the department for failure to provide warranty service.

Practice. CSHB 2438 would not require a retailer to refund a consumer's deposit if the deposit was a down payment in an executed retail, rather than just an installment, sales contract.

The bill would limit the mandatory chattel mortgage transaction disclosure to a single 12-point type page and would require that the statement include an itemization of typical and example, rather than estimated, costs. This document also would have to be provided to the consumer before the completion of the first credit application, rather than at least 24 hours before the execution of a chattel mortgage contract, and a consumer could waive the right to receive the statement. The bill would allow a retailer to withdraw the contract offer if the consumer had not accepted it within 72 hours.

Manufactured Homeowners' Recovery Trust Fund. In determining the validity of a complaint filed by a consumer requesting compensation for actual damages resulting from an unsatisfied claim against a license holder, the bill would require the director of TDHCA's manufactured housing division to make an independent inquiry as to the damages incurred, unless those damages had been established by a contested jury trial.

Statements of ownership and location. CSHB 2438 would allow the owner of real property on which a manufactured home owned by another person was located to declare the home abandoned if it had been unoccupied for at least six months. The real property owner would be required to send a notice of intent to declare the home abandoned to the owner of the home and all lienholders. On receipt of this notice, the home's owner or a lienholder would be able to freely enter the real property on which the home was located to remove the home. If the home remained on the property after 45 days, the liens on the home would be extinguished, and the real property owner would be able to apply to

TDHCA for a statement of ownership. The bill would delete current statutory language regarding abandoned homes or homes for which a previous owner or lienholder cannot be located.

The bill would require the owner to file the certified copy of the statement of ownership and location, and notify the department of its filing, within 60 days of the statement's issue. It would specify that the home would not be considered real property until the department had been notified. If the department was not notified, the department would be required to note in its records that the home remained personal property. The bill also would specify that TDHCA would not be allowed to issue a statement of ownership and location for a home that was being converted from real to personal property unless each lien on the home was released by the lienholder or each lienholder gave written consent.

Used or salvaged manufactured homes. In the sale, exchange, or lease-purchase of a used manufactured home for subsequent use as a dwelling, the bill would require a written warranty that a home was habitable and would remain habitable until the 60th day after the installation date or the date of the purchase agreement, whichever was later. The bill also would extend to 65 days after the date of agreement the amount of time a consumer had to notify a seller that the home is not habitable.

Licensing. CSHB 2438 would raise the security required for a broker's license to \$50,000 from \$20,000. The bill would allow retailers or brokers to sell a manufactured home not located at their licensed, bonded location if they provided contractually that their bond would cover the sale.

The bill would require an applicant for a salesperson's license to be sponsored by a licensed, bonded retailer. Once licensed, a salesperson would only be able to participate in the sale of a manufactured home through the retailer that sponsored the license. The bill would extend the validity of a salesperson's license from one to two years. The bill also would specify that only salesperson license holders would be required to participate in the certification and continuing education programs required under sec. 1201.113 and require that eight hours of those programs be completed within 90 days of a license being issued.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

CSHB 2438 would increase certain consumer protections, remove statutory inconsistencies, clarify numerous provisions, and delete language that is no longer applicable relating to manufactured housing.

Restrictions on personal property tax lien. CSHB 2438 would remove statutory inconsistencies relating to the collection of tax liens on a manufactured home and would ensure that a person quickly and easily could determine whether a home had any tax liens on it by requiring all liens to be filed with TDHCA.

In 2001, the 77th Legislature enacted HB 468 by Solomons, which required all tax liens on a manufactured home incurred prior to 2001 to be recorded with TDHCA by September 1, 2001. Liens not recorded by that date were made unenforceable. In 2003, the 78th Legislature enacted SB 521 by Staples, which amended language requiring a person to receive a statement from the county regarding unpaid taxes to receive a permit to move a manufactured home. The new language, which defined unpaid taxes to include past taxes, has been interpreted by some counties to allow the collection of taxes incurred prior to 2001 despite the statutory prohibition. The bill would remove this confusion by deleting the language that the counties have used to collect pre-2001 taxes.

The bill also would simplify the process of determining whether a home has an existing tax lien by requiring all existing tax liens to be filed with the department by October 1, 2005, to be enforceable, and creating a time frame for filing future tax liens with the department. Because a home may not be sold, transferred, or moved until all liens are extinguished or paid, requiring these liens to be filed in one place would ensure that both sellers and buyers were aware of any existing liens on the home. This provision would not affect a county's ability to collect taxes as long as the county filed the lien with the department. A county should not have any difficulty determining the identification number of a home in order to file the lien because TDHCA currently sends a monthly report to each county informing them of all homes installed in the county and their identification numbers and is willing to send a report detailing all homes and their identification numbers in the county upon request.

Warranties. In several cases, consumers have refused to allow a manufacturer or retailer to undertake warranty services ordered by the department so that they could use the threat of departmental sanction for

failure to complete the repairs to force the licensee to settle an unrelated dispute. CSHB 2438 would ensure that a manufacturer or retailer was protected from administrative sanctions or penalties by TDHCA if it could not complete the repairs due to the actions of the consumer and would discharge them from liability for those repairs under the warranty. The bill would not discharge the manufacturer or retailer from all liability because the language of the section clearly refers to what would happen in a specific dispute.

Practice. Expanding the down payment refund provision to executed retail, rather than installment, sales contracts would ensure that retailers and lenders were protected if a consumer decided to cancel a sale after signing a contract for the home. Once a contract has been signed, and the three-day rescission period has passed, retailers and lenders are likely to move forward on that contract in good faith and may incur costs. Since many homes are sold for cash and are not tied to an installment contract, this provision would ensure that retailers and lenders were protected on any manufactured home sale. The bill would not limit the amount that would not have to be refunded because in many cases, such as for the order of a made-to-order home, the retailer may have incurred costs well beyond the amount of the down payment.

The bill would simplify the consumer protection notice, which was created last session as part of SB 521 and has evolved into a confusing four-page document. Limiting the notice to a single page would make the form more user friendly and uniform while still ensuring disclosure to consumers. Trade groups have prepared example one-page options, indicating that it is possible to fit all of the required information on one page. Additionally, moving the presentation of this disclosure to a point earlier in the sales process, rather than 24 hours prior to the contract's execution, would allow the consumer more time to weigh the available finance options. At this point in the process, while a consumer still is deciding which home to buy and where to locate it, it would make more sense to provide information about example costs to help the consumer make a decision. Consumers still would receive detailed information about the costs of a transaction because this information is required in the contract.

Manufactured Homeowners' Recovery Trust Fund. CSHB 2438 would protect the Homeowners' Recovery Trust Fund by ensuring that claims were limited to actual damages as determined by an independent investigation. This would protect the fund from excessively large court

settlements containing high attorney fees unrelated to the damages. This would not place an additional burden on the department because the investigation currently required in statute would suffice in those claims that did not go to court. Naming the director as the investigator would ensure who would be responsible for the determination of the investigation, but as with many statutory requirements, the director could delegate the responsibility for conducting the investigation to another member of the department.

Statements of ownership and location. The bill would create a process by which a landowner could claim ownership or dispose of an abandoned home on the person's property. Under current law, landowners are prevented from removing these abandoned homes from their property because they generally have tax liens attached, which prevent the home from being moved. The new provisions would help these landowners by requiring that the lienholder either seize the property and conduct a tax sale or give up claim to the lien.

Changing the sale reporting requirements from the purchaser to the seller and requiring that all personal property transfers be filed with the department within 30 days would help keep the statement current and would help taxing entities maintain accurate ownership and records for property tax purposes. The other sections relating to these statements would codify a number of current rules, fill in procedural gaps, and clarify current statute.

Used or salvaged manufactured homes. The bill would strengthen the habitability warranty by extending the warranty to the later of 60 days past the installation date or the date of purchase. Currently, the warranty begins when the home is purchased and, if there is a delay in delivery or occupation, may run out before the home is occupied. The bill would ensure that even if a person did not immediately inhabit the home, the warranty still would apply. It also would give consumers an additional five days to inform the seller that the home was not habitable and end all obligations under the chapter.

Licensing. The bill would raise the amount of the bond or security required by brokers to receive or renew a license to the same as that required of retailers, because brokers perform similar functions to those of retailers. Raising the bond amount would ensure that consumers were protected if a broker disappeared mid-transaction or failed to fulfill

contractual obligations. Because most brokers also hold licenses as retailers and installers, the additional bond requirement would not pose a burden as they already are required to carry the higher bond amount of \$50,000.

Allowing retailers or brokers to sell manufactured homes from a non-bonded location, provided that they contractually guaranteed that their bond would cover the sale, would facilitate the sale of foreclosed and other homes while still ensuring consumer protection. Currently, if a retailer or broker acquires a home installed in an area outside of the bonded location, the retailer or broker must pay to have the home moved to the bonded location, and the home often must be moved again upon purchase. Not only is this expensive, but it is not good for the home. Allowing the retailer or broker to cover that home with a pre-existing bond would reduce these costs and concerns while affording consumers the same protections as if they had bought the home at a bonded location.

The bill would clarify that only salespersons would be required to receive ongoing education in the rules and regulations of manufactured housing, as intended when this provision was added last session by SB 521. The intent of SB 521 was to require those persons actually in contact with consumers to receive ongoing education. However, TDHCA has interpreted this section to apply to retailers and brokers as well. CSHB 2438 would return the application of the statute to its original intent. Other licensees should not be required to take continuing education because they are required to attend 20 hours of courses to receive the license and because they are required to have financial responsibility, which ensures that they will keep up with changes in the industry. Extending the validity of licenses to two years and requiring continuing education only every other year would reduce the burden on salespeople without diminishing the content, since the laws regulating housing may be changed only every other year when the Legislature is in session.

Prohibiting a licensed salesperson from working for more than one dealer at a time would ensure greater consumer protection by creating a clear line of responsibility for transactions conducted by that salesperson. The bill would not generally limit salespersons from assisting consumers with the purchase of a manufactured home from another dealer if a customer could not find the desired home at the dealer's lot because most retailers also are licensed as brokers and may negotiate the transaction of a home of another retailer.

OPPONENTS
SAY:

CSHB 2438 would reduce consumer protections on manufactured housing and make it more difficult for taxing authorities to collect tax liens.

Restrictions on personal property tax liens. CSHB 2438 would hinder the collection of tax liens by taxing authorities and therefore negatively impact could the financial resources of these entities. In order to file a lien with the TDHCA, the authority must have the identification number of the manufactured home. However, in many cases, this number has been removed, defaced, or otherwise made illegible. By prohibiting the collection of those liens that cannot be filed with the department, taxing authorities could lose significant revenue. The bill also could hinder the collection of taxes by removing the requirement that a person receive a statement from the county certifying that no taxes are due on the home in order for the home to receive a moving permit. This provision ensures the collection not only of back taxes, but also current taxes that become virtually uncollectible once a home is moved.

Warranties. The language of the provisions relating to warranty services that cannot be completed due to a consumer's actions is overly broad and could impair considerably a homeowner's right to enforce a warranty. The bill states that if the consumer refused to comply with the new order, the manufacturer or retailer would have *no* liability to the consumer. It ought to specify that the manufacturer or retailer would have no liability *for the services required under that order* to ensure that the warranty would remain in effect if unrelated repairs were needed in the future. Moreover, this section is unnecessary because manufacturers and retailers already are required to write to TDHCA explaining if they were unable to complete repairs, and the department does not penalize those persons who cannot complete repairs through no fault of their own.

Practice. The bill would set no limit on the amount of a down payment that a retailer or broker could retain if a consumer decided to cancel a sale after signing a contract. Manufactured homes are meant to be affordable housing, and the people buying these homes often do not have much money. The state should set a limit on the amount that may be retained — at most, a person should not be able to retain more than any costs incurred.

Allowing sellers to disclose typical or example costs rather than the estimated costs of a specific purchase would reduce the information and protection available to consumers as they shop for a manufactured home.

Costs may vary widely depending on the type of home purchased and the taxing districts in which a home is located. As a result, a one-size-fits-all notice likely would be of little benefit to consumers. Preparing specific information about a possible sale is not burdensome because the department has compiled information on its Web site regarding the tax rate of every taxing jurisdiction in Texas. If the Legislature wishes to simplify the form, a better method would be to separate the form in two, with one form providing information about the types of mortgages and loans and the other form dealing with estimated costs. Moreover, consumers should not be able to waive the right to this statement, since it contains essential information about which many people likely are unaware.

Manufactured Homeowners' Recovery Trust Fund. Requiring the director to conduct an independent inquiry into the actual damages incurred for each claim on the trust fund significantly would burden the director. Furthermore, this inquiry would be redundant since the department already is required to conduct an investigation under statute.

OTHER
OPPONENTS
SAY:

Used or salvaged manufactured homes. Although the bill would strengthen the habitability warranty by extending it to 60 days past the *installation date*, consumers would be unable to take advantage of this increased protection since they still would be required to notify the seller of a defect within 65 days of the *purchase date*. The bill should be amended to change the second reference from purchase date to installation date.

Licensing. The provision in the bill specifically prohibiting a salesperson from working for more than one dealer is inconsistent with sec. 1201.158 of the Occupations Code, which specifically authorizes salespersons to work for more than one retailer or broker at a time. This section should be deleted from statute.

The bond amounts set in statute are relatively small compared to the potential liability the department could face if a licensee were to go bankrupt, default, abscond, or otherwise not fulfill the required financial obligations. The bill should raise all of the required bond or security amounts, not just those for brokers, to ensure that consumers were protected.

Many departments and licensing agencies are moving to two-year licenses in order to increase efficiency, reduce costs, and ease the regulations on

license holders. The bill should allow all manufactured housing licenses, rather than just those for salespersons, to be renewed every second year.

NOTES:

The committee substitute differs from the original bill by:

- removing provisions on tax liens on homes designated as real property;
- removing a provision that would have made changes to the Tax Code applicable only to ad valorem taxes beginning in 2006;
- deleting language prohibiting a consumer from waiving certain disclosure statements;
- specifying that a retailer could withdraw an offer if it had not been accepted by the consumer within 72 hours;
- specifying that the provisions of the chapter relating to the construction and installation of, and warranties on, a manufactured home would apply regardless of whether the home was considered to be real or personal property;
- adding several provisions relating to the treatment of homes designated as real property;
- adding a provision for converting real property to personal property;
- requiring TDHCA to provide information on existing tax liens on a home upon request; and
- making a number of clarifications and conforming changes.

The companion bill, SB 1285 by Armbrister, has been referred to the Senate Business and Commerce Committee.