

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1275  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas Department of Housing and Community Affairs (TDHCA) through its manufactured housing division regulates the manufactured housing industry in Texas. It administers the Texas Manufactured Housing Standards Act (Standards Act) and acts as state supervisory agent for the United States Department of Housing and Urban Affairs to administer certain aspects of the United States National Manufactured Housing Construction and Safety Standards Act of 1974.

S.B. 1275 proposes to move the manufactured housing division into the Texas Department of Licensing and Regulation (TDLR). TDLR regulates 29 professions and has a well established structure for occupational licensing and enforcement. TDLR currently regulates residential and commercial modular buildings, which are similar to manufactured housing. TDLR also regulated manufactured housing until 1995, when that function was transferred to TDHCA.

TDLR also uses third party inspectors to review modular housing installations, which are similar to manufactured housing installments, to enforce state regulations. Using third-party inspectors enables TDLR to ensure modular home obtains in inspection.

As proposed, S.B. 1275 amends current law relating to the regulation of manufactured housing by the Texas Department of Licensing and Regulation.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the governing board of Texas Department of Community Affairs is transferred to the Texas Commission of Licensing and Regulation throughout this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2306.0521, Government Code, as follows:

Sec. 2306.0521. ORGANIZATIONAL FLEXIBILITY OF DEPARTMENT. Deletes existing Subsection (a) designation. Authorizes the executive director (director) of the Texas Department of Housing and Community Affairs (TDHCA), with the approval of TDHCA's governing board (board), notwithstanding any other provision of this chapter, rather than notwithstanding Section 2306.021(b), take certain actions. Makes conforming changes. Deletes existing Subsection (b) providing that this section does not apply to the manufactured housing division.

SECTION 2. Amends Section 2306.591(a), Government Code, to provide that for a manufactured home to be approved for installation and use as a dwelling in a colonia home must be a HUD-code manufactured home, as defined by Section 1201.003, Occupations Code; the home must be habitable, as defined Section 1201.453, Occupations Code; and ownership of the home must be properly recorded with the Texas Department of Licensing and Regulation (TDLR), rather than the manufactured housing division of TDHCA.

SECTION 3. Amends Section 1201.003, Occupations Code, by adding Subdivision (7-a) and amending Subdivisions (10) and (11) to, respectively, define "commission" and redefine "department" and "director."

SECTION 4. Amends Section 1201.053(a), Occupations Code, to require TDLR, rather than the board, to adopt rules and otherwise act as necessary to comply with previously established standards and procedures.

SECTION 5. Amends Sections 1201.054(b) and (c), Occupations Code, as follows:

(b) Requires TCLR, rather than the board, if requested, to, after at least 10 days' notice hold a hearing on any rule that it proposes to adopt, other than a rule that is to be adopted under emergency rulemaking, in which case only the requirements of Chapter 2001 (Administrative Procedure), Government Code, shall apply.

(c) Makes a conforming change.

SECTION 6. Amends Sections 1201.055(a), (c), and (d), Occupations Code, as follows:

(a) Requires TCLR, rather than the 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 certain fees.

(c)-(d) Makes a conforming change.

SECTION 7. Amends Section 1201.056, Occupations Code, to require TCLR, rather than the board, to establish fees for the issuance and renewal of licenses for manufacturers, retailers, brokers, salespersons, rebuilders, and installers.

SECTION 8. Amends Section 1201.057, Occupations Code, to require TCLR, rather than the board, to charge a fee to each person attending a course of instruction described by Section 1201.104.

SECTION 9. Amends Sections 1201.058(a), (d), and (e), Occupations Code, as follows:

(a) Requires TCLR, rather than the board, to establish reasonable fees for all matters under this chapter providing for fees. Authorizes TDLR, if TDLR's rules provide an option to file a document electronically, to charge a discounted fee for the electronic filing.

(d) Authorizes the director, notwithstanding Subsection (c), to approve the refund of fees, in limited and appropriate circumstances and in accordance with rules adopted by TCLR, rather than the board.

(e) Authorizes the director, if the governor by executive order or proclamation declares a state of disaster under Chapter 418 (Emergency Management), Government Code, in accordance with rules adopted by TCLR, rather than the board, to waive the imposition of any fee under this chapter in the affected area.

SECTION 10. Amends Sections 1201.104(e) and (f), Occupations Code, as follows:

(e) Requires TCLR, rather than the board, to adopt rules relating to course content and approval.

(f) Provides that an applicant for an initial installer's license shall receive a license on a provisional basis. Provides that the person's provisional status remains in effect until a sufficient number of installations completed by the person have been inspected by TDLR and found not to have any identified material violations of TDLR's rules. Requires

TCLR, rather than the board, to adopt rules to establish what constitutes a sufficient number of installations under this subsection, with the advice of the advisory committee to be established under Section 1201.251.

SECTION 11. Amends Section 1201.105(c), Occupations Code, to make a conforming change.

SECTION 12. Amends Section 1201.113(a), Occupations Code, as follows:

(a) Requires TCLR, rather than the board, to approve or administer continuing education programs for licensees under this chapter. Requires that a continuing education program be at least eight hours long and include the current rules of TDLR and such other matters as TCLR may deem relevant.

SECTION 13. Amends Section 1201.118, Occupations Code, as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. Requires TCLR, rather than the board, to adopt rules providing for additional review and scrutiny of any application for an initial or renewal license that involves a person who has previously:

- (1) been found in a final order to have participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license;
- (2) been found to have engaged in activity subject to this chapter without possessing the required license;
- (3) caused the trust fund to incur unreimbursed payments or claims; or
- (4) failed to abide by the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 14. Amends Section 1201.1521(b), Occupations Code, to provide that subject to rules adopted by TCLR, rather than the board, a consumer may waive a right of rescission in the event of a bona fide emergency.

SECTION 15. Amends Section 1201.162(a), Occupations Code, as follows:

(a) Requires the retailer, before the completion of a credit application or more than one day before entering into any agreement for a sale, exchange, or the exercise of the lease purchase option that will not be financed, to provide to the consumer a written disclosure in the form promulgated by TCLR, rather than board. Requires that the disclosure be in at least 12-point type and address matters of concern relating to costs and obligations that may be associated with home ownership, matters to be considered in making financing decisions, related costs that may arise when a purchasing a manufactured home, and such other matters as TCLR may consider, rather than deem, appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. Requires that the form also conspicuously disclose the consumer's right of rescission.

SECTION 16. Amends Section 1201.203, Occupations Code, as follows:

Sec. 1201.203. FORMS; RULES. (a) Requires TCLR, rather than the board, to adopt rules and forms relating to:

- (1) the manufacturer's certificate;
- (2) the statement of ownership and location;
- (3) the application for a statement of ownership and location; and
- (4) the issuance of an initial or revised statement of ownership.

(b) Requires TCLR, rather than the board, to adopt rules for the documenting of the ownership and location of a manufactured home that has been previously owned in this state or another state. Requires that the rules protect a lienholder recorded with TDLR.

SECTION 17. Amends Section 1201.205, Occupations Code, as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. Requires a statement of ownership and location to be evidenced by a TCLR-approved form, rather than board-approved form, issued by TDLR setting forth certain information. Makes conforming changes.

SECTION 18. Amends the heading to Section 1201.251, Occupations Code, to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY COMMISSION.

SECTION 19. Amends Sections 1201.251(a), (d), and (e), Occupations Code, as follows:

(a) Requires TCLR, rather than the board, to adopt standards and requirements for the installation and construction of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public, and the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.).

(d) Authorizes TCLR, rather than the board's, rules, in order to ensure that the determinations required by this section are properly made by qualified persons, to provide for the approval of foundation systems and devices that have been approved by licensed engineers, and any generic installation standards promulgated by rule to first be reviewed by an advisory committee established by TCLR comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) Requires the advisory committee established by Subsection (d) to make a report to TCLR, rather than the board, setting forth each comment and concern over any proposed rules. Provides that the members of the committee do not have any personal liability, rather than shall have no personal liability, for providing this advice.

SECTION 20. Amends Section 1201.252(a), Occupations Code, to prohibit a local government unit of this state from adopting a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by TCLR, rather than board, unless, after a hearing, TCLR expressly approves the proposed standard.

SECTION 21. Amends Section 1201.254, Occupations Code, to require each requirement or standard that is adopted, modified, amended, or repealed by TCLR, rather than the board, to state its effective date.

SECTION 22. Amends Section 1201.255(b), Occupations Code, to prohibit an installer from installing a used manufactured home at a location on a site that has evidence of ponding, runoff under heavy rains, or bare uncompacted soil unless the installer first obtains the owner's signature on a form promulgated by TCLR, rather than the board, disclosing that such conditions may contribute to problems with the stabilization system for that manufactured home, including possible damage to that home, and the owner accepts that risk.

SECTION 23. Amends Sections 1201.302(a) and (b), Occupations Code, as follows:

(a) Authorizes the director, to ensure that a manufactured home sold or installed in this state complies with the standards code, to by contract provide for a federal agency or an

agency or political subdivision of this state or another state to perform an inspection or inspection program under this chapter or under rules adopted by TCLR, rather than the board.

(b) Requires TDLR, on request, to authorize a local governmental unit in this state to perform an inspection or enforcement activity related to the construction of a foundation system or the erection or installation of manufactured housing at a homesite under a contract or other official designation and rules adopted by TCLR, rather than the board. Authorizes TDLR to withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of TDLR.

SECTION 24. Amends Section 1201.405(g), Occupations Code, as follows:

(g) Authorizes TCLR, rather than the board, to, by rule place reasonable limits on the costs that may be approved for payment from the trust fund, including the costs of reassigned warranty work, and require consumers making claims that may be subject to reimbursement from the trust fund to provide estimates establishing that the cost will be reasonable. Provides that such rules may also specify such procedures and requirements as TCLR, rather than the board, may deem necessary and advisable for the administration of the trust fund. Makes a conforming change.

SECTION 25. Amends Section 1201.407(e), Occupations Code, to make conforming changes.

SECTION 26. Amends Section 1201.513(b), Occupations Code, to prohibit a retailer from knowingly permitting a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase to that consumer before the closing of any required financing unless the consumer is first given a form adopted by TCLR, rather than the board, disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 27. Amends Section 1201.552, Occupations Code, to require TCLR, rather than the board, to issue an order after receiving a proposal for decision.

SECTION 28. Amends Section 1201.553, Occupations Code, to provide that judicial review of any order, decision, or determination of the TCLR, rather than the board, is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001 (Administrative Procedure), Government Code.

SECTION 29. Amends Section 1201.605(d), Occupations Code, to require TCLR, rather than the board, to issue an order after receiving a proposal for decision.

SECTION 30. Amends Section 1201.607, Occupations Code, to make a conforming change.

SECTION 31. Amends Section 1201.608(c), Occupations Code, to authorize TDLR to carry out "sting" or undercover investigations in accordance with TCLR-adopted rules, rather than board-approved rules, if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

SECTION 32. Amends Section 1201.610(c), Occupations Code, to make a conforming change.

SECTION 33. Amends Section 1201.611(a), Occupations Code, to require TCLR, rather than the board, to adopt rules relating to the administrative sanctions that may be enforced against a person regulated by TDLR.

SECTION 34. Amends Section 11.432(a), Tax Code, as follows:

(a) Requires that, for a manufactured home to qualify for an exemption under Section 11.13 (Resident Homestead), an application must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the TDLR under Section 1201.207 (Issuance of Statement of Ownership and Location), Occupations Code, rather than issued by the manufactured housing division of TDHCA, showing that

the individual applying for the exemption is the owner of the manufactured home or be accompanied by a verified copy of the purchase contract showing that the applicant is the purchaser of the manufactured home, unless a photostatic copy of the current title page of the home is displayed on the computer website of TDLR, rather than TDHCA. Authorizes the appraisal district to rely upon the computer records of TDLR to determine whether a manufactured home qualifies for an exemption. Makes a conforming change.

SECTION 35. Amends Section 23.127(a)(4), Tax Code, to redefine "department."

SECTION 36. Amends Sections 32.03(a-2), (b), and (e), Tax Code, to make conforming changes.

SECTION 37. Amends Section 623.094(a), Transportation Code, to authorize TDLR, except as authorized by Section 623.095 (Permit Types), to issue a permit only to a person licensed by TDLR, rather than TDHCA, as a manufacturer, retailer, or installer, or motor carriers registered with TDLR.

SECTION 38. Repealers: (1) Section 2306.067(d) (relating to loans of department employees), Government Code;

(2) Subchapter AA (Manufactured Housing Division), Chapter 2306 (Texas Department of Housing and Community Affairs), Government Code; and

(3) Section 1201.003(5) (defining "board"), Occupations Code.

SECTION 39. Provides that on the effective date of this Act:

(1) the manufactured housing division of TDHCA and the Manufactured Housing Board within TDHCA, as they exist immediately before the effective date of this Act, are each abolished and the offices of the members of the board serving on that date are abolished;

(2) all powers, duties, functions, and activities performed by the manufactured housing division immediately before the effective date of this Act are transferred to TDLR;

(3) all employees of the manufactured housing division become employees of TDLR, to be assigned duties by the executive director of TDLR;

(4) a rule or form of the manufactured housing division is a rule or form of TDLR and remains in effect until changed by TDLR;

(5) a reference in law to the manufactured housing division means TDLR;

(6) a reference in a law or rule to the Manufactured Housing Board means TDLR;

(7) a reference in law to the executive director of the manufactured housing division means the executive director of TDLR;

(8) a license, permit, or certification in effect that was issued by the manufactured housing division is continued in effect as a license, permit, or certification of TDLR;

(9) a complaint, investigation, or other proceeding pending before the manufactured housing division is transferred without change in status to TDLR;

(10) all obligations, rights, and contracts of the manufactured housing division are transferred to TDLR; and

(11) all property, including records and money, in the custody of the manufactured housing division and all funds appropriated by the legislature for use by the manufactured housing division shall be transferred to TDLR.

SECTION 40. Requires a member of the advisory committee described by Section 1201.251 (Standards and Requirements Adopted by Board), Occupations Code, who was appointed by the Manufactured Housing Board before the effective date of this Act, to continue to perform the member's duties under Sections 1201.251 and 1201.104 (Qualification for License), Occupations Code, as amended by this Act, under the direction of TCLR until the expiration of the member's term.

SECTION 41. Effective date: September 1, 2011.