I certify this to be a true and correct copy of the indicated document as referred or transmitted to committee.

Chief Clerk of the House

FILED FEB 14 2007

By: Patrick B. Haggerty

H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to the licensing, acquisition, and regulation of manufactured housing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.432, Tax Code, is amended to read as follows:

HOMESTEAD EXEMPTION FOR MANUFACTURED HOME. (a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, 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~~] a photostatic copy of the current title page for said home displayed on the computer website of the Texas Department of Housing and Community Affairs. Alternatively, the taxing authority may rely upon the computer records of the Texas Department of Housing and Community Affairs.

(b) [~~The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:~~

[~~(1) the manufactured home qualifies for an exemption~~

~~as provided by Subsection (a); and~~

[~~(2) the manufactured home is listed together with the land on which it is located under Section 25.08.~~] Whether the owner has elected to treat the home as real property or personal property and whether the home is listed on the tax rolls with the real property to which it is attached or separately, the consumer is entitled to obtain the homestead exemptions provided by Section 11.13 of this code.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code

SECTION 2. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

SECTION 3. Section 32.03, Tax Code, is amended by amending Subsections (a), (a-1), (a-2) and (b) and adding Subsections (c), (d) and (e) to read as follows:

(a) [~~Except as provided by Subsection (a-1),~~] A [~~a~~] tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201 (9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien. Once a valid tax lien has been

timely filed by the taxing authority with the Texas Department of Housing and Community Affairs pursuant to the rules of the department prior to the date of the transfer, the buyer is deemed to have actual notice of the lien.

(a-1) A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code;

(1) before October 1, 2005; or

(2) not later than six months after the end of the year for which the tax was owed.

(a-2) A person may not transfer title of a manufactured home until all tax liens [~~perfected~~] on the home timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released as well as any personal property taxes on the manufactured home which accrued on each January 1 that falls within 18 months of the date of the sale. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax

year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) If a person with an interest in the ownership of a manufactured home believes that a collector or appraiser is acting in disregard of this statute or of the provisions of Chapter 1201 of the Occupations Code, the person may file a complaint with the Comptroller. The office of the Comptroller will conduct an administrative hearing to determine the validity of the complaint. If the Comptroller finds that the collector or appraiser is disregarding this statute or Chapter 1201 of the Occupations Code, the Comptroller shall issue a mandate that the collector or appraiser act in accordance with the Comptroller's mandate. The Comptroller shall mail the mandate to the collector or appraiser by United States Certified Mail. If the collector or appraiser fails to comply with the Comptroller's mandate within seven days of the receipt of the mandate, the Comptroller shall forward a complaint to the Attorney General's office, which shall then file proceedings to have the tax collector or appraiser held in contempt for failure to obey the Comptroller's mandate. The District Court shall impose such fines or other punishment as the Court deems appropriate to punish the collector or appraiser for their failure to obey the mandate of the Comptroller and to assure that the future actions of the collector or appraiser will be in accordance with the Comptroller's mandate.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

(f) If at the time the prospective buyer seeks a certification from the tax collector that taxes have been paid, the tax collector determines that the manufactured home has been omitted from the tax rolls of either or both of the two preceding years by mistake, the tax collector will calculate the taxes due for the omitted years by applying the tax rate for the omitted years to the proposed sales price that the buyer is paying for the

manufactured home. Upon payment of the resulting sum, the tax collector shall issue a certification to the Department of Housing and Community Affairs that the taxes have been paid for the omitted years. Even though the buyer of the manufactured home pays the taxes calculated hereunder for the manufactured home which was omitted from the tax rolls, the buyer shall have the right to protest the value established by this provision using the protest of valuation procedures established by the Tax Code. If the protest is successful, the tax collector shall refund to the buyer all sums in excess of the taxes which were owed based upon the revised valuation.

(g) If the tax lien filed with the Department of Housing and Community Affairs reflects a taxpayer name that is different from the name of the owner of the manufactured home, the Department of Housing and Community Affairs shall provisionally record the lien on its records using the serial number or other identifying number for the manufactured home. The Department of Housing and Community Affairs shall notify the appraisal district of the disparity between the name of the taxpayer and the owner of the home. The taxing authority shall have sixty days from the date of the notice to file an amended tax lien reflecting the taxpayer as the owner of the home. The taxing authority shall notify both the taxpayer originally reflected on the tax rolls and the owner of the manufactured home reflected on the records of the Texas Department of Housing and Community Affairs of the filing of the tax lien and the disparity between the two names.

SECTION 4. Section 1201.003(15), Occupations Code, is

amended to read as follows:

(15) "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home or any structure that (1) regardless of size is designed for use as a dwelling when it is connected to the required utilities, (2) is built on a permanent chassis and (3) is not a modular home as defined in Section 1202, Occupations Code.

SECTION 5. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"New Manufactured home" means a home which is not a Used Manufactured home

SECTION 6. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"Used Manufactured home" means a home which has been occupied for use.

SECTION 7. Section 1201.003, Occupations Code, is amended by adding a definition to read as follows:

"Fund" means the homeowners' recovery fund established by the director under Subchapter I.

SECTION 8. Section 1201.008 Occupations Code, is amended by adding subsection (e) to read as follows:

(e) Notwithstanding any zoning or other law to the contrary, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may move the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the

prior manufactured home.

SECTION 9. Section 1201.052(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issues orders~~] and otherwise act as necessary to ensure compliance with the purpose of this chapter to implement and provide for uniform enforcement of this chapter and the standards code. The director shall act as necessary to implement the rules adopted by the board and to further the directions given by the board to ensure that all persons comply with the provisions of this Section whether they are licensed or not.

SECTION 10. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue order,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonable required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Construction and Safety Standards Act of 1974 (42 U.S.C. Section5401 et seq.) approved by the secretary of housing and urban development.

SECTION 11. Section 1201.058, Occupations Code, is amended

to read as follows:

The board shall establish the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter. If the department's rules provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

SECTION 12. Section 1201.105(a), Occupations Code, is amended to read as follows:

(a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amounts which are due directly to the retailer under Section 1201.356(c), Occupations Code.

SECTION 13. Section 1201.106(a), Occupations Code, is amended to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer;

(3) $50,000 [~~($30,000)~~] for a rebuilder;

(4) $50,000 for a broker; or

(5) $50,000 [~~($10,000)~~] for an installer.

SECTION 14. Section 1201.162(a), Occupations Code, is amended to read as follows:

(a) Before the completion of a credit application in credit

sale and more than one day before the execution of a purchase contract in a cash sale, the retailer or agent must provide to the consumer the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as "HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."

SECTION 15. Section 1201.162(d) and (e), Occupations Code, is amended by renumbering and amending Subsection (c) to read as follows:

(b) [~~(d)~~] A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with the direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) [~~(e)~~] The right of rescission described in subsection (a) shall apply only to the sale transaction between the retailer and buyer. Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home

or otherwise impair a title or lien position of a person other than the retailer. Until three days after the retailer delivers a copy of the notice required by subsection (a), the buyer shall continue to have the right of rescission with regard to the retailer. The buyer's execution of a signed receipt of a copy of the notice required by subsection (a) shall constitute conclusive proof of the delivery of the notice. If buyer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease upon the filing of the lien with the Texas Department of Housing and Community Affairs.

SECTION 16. Section 1201.165, Occupations Code, is amended to read as follows:

The consumer may modify or waive the right to rescind as well as the time periods provided herein for disclosures prior to the execution of the contract if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by the Occupations Code and sell the manufactured home without the required waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been

declared by the Governor to be a major disaster area. If the Governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

SECTION 17. Section 1201.205(5), Occupations Code, is amended to read as follows:

(5) the physical address where [~~the county of this state in which~~] the home is installed for occupancy including the name of the county and if different, the mailing address of the owner of the home:

SECTION 18. Section 1201.206, Occupations Code, is amended by renumbering the existing Subsections, amending Subsection (a) and (c) and adding Subsection (f) and (g) to read as follows:

(a) [~~(b)~~] At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. The retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first Statement of Origin and Location.

(b) [~~(c)~~] Not later than the [~~30th~~] 45th day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location.

(c) [~~(d)~~] Not later than the [~~30th~~] 45th day after the date

of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If the seller accepts a traded in manufactured home as part of the consideration for the sale of another manufactured home, the seller shall file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the traded in manufactured home from the prospective buyer to the seller. The seller shall file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home which was sold by the seller. If the seller is a retailer, the seller shall indicate on the application for the issuance of the new statement of ownership and location if the home has been added to the inventory of the retailer.

(d) [~~(c)~~] Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

(e) [~~(f)~~] If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 30th day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(f) When the seller files an application for statement of ownership and location for a used manufactured home that is not in a retailer's inventory, the seller shall also file with the department a statement from the Tax Assessor Collector that there are no personal property taxes due on the manufactured home which may have accrued on each January 1 that falls within 18 months prior to the date of the sale.

(g) If the seller of the manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within forty-five (45) days of the date of the sale, the department may assess a penalty of at least ONE HUNDRED DOLLARS ($100.00). The department shall have the authority to enforce the collection of any penalty from the seller through judicial means. The department shall place on the application for the statement of ownership and location the following legend in a clear and conspicuous manner:

THE FILING OF AN APPLICATION FOR A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN FORTY-FIVE (45) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A PENALTY OF AT LEAST ONE HUNDRED DOLLARS ($100.00) OR MORE.

SECTION 19. Section 1201.206, Occupations Code, is amended by adding Subsection (h) to read as follows:

(h) When a properly completed notice of installation on the department's promulgated form is filed that involves a secondary move, it must be accompanied by and either:

(1) one true and correct copy of the original notice of

installation; or

(2) a certification that a true and correct copy of the notice of installation, has been provided to the chief appraiser for the county in which the home was installed. The delivery of the copy of the notice may be accomplished by either certified mail or by electronic mail of the electronically reproduced document in a commonly readable format.

If the method specified is subsection(2) above is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(i) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the department shall provide ,upon request, a tax assessor-collector with one copy of any requested notice of installation.

SECTION 20. Section 1201.207 (c), Occupations Code is amended to read as follows:

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status of a manufactured home for any activity occurring prior to the issuance of the statement of ownership and location without

either the written permission of the owner of record for the manufactured home or court order.

SECTION 21. Section 1201.207, Occupations Code is amended by adding subsection (d) to read as follows:

(d) Notwithstanding anything herein to the contrary, if the consumer purchases a manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens as well as a statement of ownership and location reflecting the same upon payment by the consumer of the purchase price to the retailer. If there is an existing lien on the manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from either the retailer or from the Home Owner Recovery Fund, whichever the owner of the lien chooses.

SECTION 22. Section 1201.219(b), Occupations Code, is amended to read as follows:

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department. The form shall require the disclosure of the original dollar amount of the lien as well as the name and address of the taxpayer that is obligated to pay the taxes. The department shall disclose on its web site (1)the date of each lien filing, (2) the original amount of the lien claimed by each filing and (3) that the dollar amount shown

does not include additional sums including interest, penalties and attorney fees. The recordation of a lien with the department is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home.

SECTION 23. Section 1201.352, Occupations Code, is amended by adding (d) to read as follows:

(d) Within 30 days after the installation of the home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

SECTION 24. Section 1201.353, Occupations Code, is amended to read as follows:

(a) The consumer shall give written notice to the manufacturer, installer or retailer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is notice to the manufacturer, installer or retailer.

SECTION 25. Section 1201.354, Occupations Code, is amended to read as follows:

The manufacturer, installer or retailer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 26. Section 1201.355, Occupations Code, is amended to read as follows:

(a) If the manufacturer, installer or retailer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, installer or retailer may request the department to perform a consumer complaint home inspection if the manufacturer, installer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, installer or retailer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

SECTION 27. Section 1201.356, Occupations Code, is amended to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer or retailer an appropriate order for corrective action by the manufacturer, installer or retailer, specifying a reasonable period for completion of the corrective action. On new manufactured homes, both the installer and retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357 of the Occupations Code. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame for compliance. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. If the installer does not pay the reimbursement within 30 days, the retailer may seek reimbursement from the bond of the installer.

(d) The department may issue an amended report and order if all parties receive notice of and are given an opportunity to respond to that report and order. The amended report and order supersede the initial report and order.

(e) The manufacturer, retailer, or installer shall comply with the report and order of the director.

SECTION 28. Section 1201.357, Occupations Code, is amended to read as follows:

(a) If the manufacturer, installer or retailer, as applicable, fails to provide warranty service within the period specified by the director under Section 1201.356, the manufacturer, installer or retailer must show good cause in writing as to why the manufacturer, installer or retailer must show good cause in writing as to why the manufacturer, installer or retailer failed to provide the service.

(b) If the manufacturer, installer or retailer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold a hearing at which the manufacturer, installer or retailer must show cause as to why the manufacturer's, installer's or retailer's license should not be suspended or revoked.

(c) If the manufacturer, installer or retailer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, installer or retailer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, installer or retailer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply

with the department's new order, the manufacturer, installer or retailer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer; and

(3) is not subject to an action by the department for failure to provide warranty service.

SECTION 29. Section 1201.358, Occupations Code, is amended to read as follows:

(a) Failure by the manufacturer, installer or retailer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, installer's or retailer's license.

(b) If after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer, installer or retailer, failure or refusal by the manufacturer, installer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's, installer's or retailer's license. If the director determines that the order was incorrect regarding the obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer, installer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, installer or retailer whose license is not revoked and who is not out of business to

perform the warranty obligation of a manufacturer, installer or retailer whose license is revoked or who is out of business; and

(2) giving the manufacturer, installer or retailer performing the obligation the right of indemnification against the other.

(d) A manufacturer, installer or retailer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages and attorney's fees from the trust fund.

SECTION 30. Section 1201.401, Occupations Code, is amended to read as follows:

Manufactured Homeowners' Recovery [~~Trust~~] Fund

The manufactured homeowners' recovery fund is an account [~~in the general revenue fund~~] held in trust for carrying out the specific purposes of the fund.

SECTION 31. Section 1201.551(a)(3), Occupations Code, is amended to read as follows:

(3) failed repeatedly to [~~timely~~] file with the department [~~provide to a consumer an~~] completed applications for a statement of ownership and location within forty five (45) days of either the date of the sale of a manufactured home as required by 1201.206 or the date of the installation, whichever comes later [~~and any information necessary to complete the application~~]:

SECTION 32. Section 1201.605, Occupations Code, is amended by adding Subsection (c), (d), (e), (f), (g) and (h) to read as follows:

(c) In addition to all of its other authority, for each

violation of Subsection (a) above, the board may assess against a licensee who either fails to take action required by this Chapter or takes an action prohibited by this Chapter, an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(d) The board may assess against any person who is not a licensee under this Chapter, who either fails to take action required by this Chapter or takes an action prohibited by this Chapter, an administrative penalty not to exceed $10,000 for each violation of this Chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs, and;

(5) deposition expenses.

(e) A person who is not exempt under this chapter and who acts as a manufacturer, broker, installer, retailer or salesperson without first obtaining a license required under this chapter commits an offense. An offense under this subsection is a Class B misdemeanor. A second or subsequent conviction for an offense under this subsection shall be punished as a Class A misdemeanor.

(f) A person who received money, or the equivalent of money, as a fee or profit because of or in consequence of the person acting as a manufacturer, broker, installer, retailer or salesperson without an active license or being exempt under this chapter is

liable for damages in an amount that is not less than the amount of the fee or profit received and not to exceed three times the amount of the fee or profit received, as may be determined by the court. An aggrieved person may recover damages under this subsection in a court.

(g) If the director has reasonable cause to believe that a person who is not licensed or exempt under this chapter has engaged in an act or practice for which a license is required under this chapter, the director may 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. The order shall contain a reasonably detailed statement of the facts on which the order is made. The order may assess an administrative penalty in an amount not to exceed $1,000 per day for each violation and may require a person to pay to a consumer any compensation received by the person from the consumer in violation of this chapter. If a person against whom the order is made requests a hearing, the director shall set and give notice of a hearing before the director or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code. An order under this subsection becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued.

(h) If a hearing has not been requested under Subsection (e) not later than the 30th day after the date the order is made, the order is considered final and not appealable. The director, after giving notice, may impose against a person who violates a cease and

desist order, an administrative penalty in an amount not to exceed $1,000 for each day of a violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this section. A penalty collected under this subsection shall be deposited in the fund.

SECTION 33. Section 347.254 is amended by adding (d) to read as follows:

(d) The escrow requirements of Subsection (a) does not apply if the consumer has established an escrow account with the collector pursuant to Section 31.072 of the Tax Code.

SECTION 34. Section 347.403, Finance Code, is amended to read as follows:

Sec. 347.403. AMOUNTS THAT MAY BE RECOVERED BY REAL PROPERTY OWNER. In addition to the recovery of the rental charges from the tenant, the owner of real property who is required to retain legal counsel to recover the amounts subject to the possessory lien under Section 347.402 is entitled to recover from the tenant:

(1) other actual damages;

(2) attorney's fees; and

(3) court costs.

The owning of a security interest in a manufactured home does not create an obligation of the creditor to pay rental of real property on which the home is located nor any other damages solely because of the existence of the security interest.

If the owner of a security interest in a manufactured home takes no action with regard to the manufactured home, the owner of the security interest shall not be liable to either the owner of the real property or the owner of the manufactured home for any damages accruing with regard to real property on which the manufactured home is located. The creation of the possessory lien as described in Section 347 shall take precedence over all perfected liens on the manufactured home other than tax liens. As to all parties other than the owner of the manufactured home and any person that executed the lease agreement for the real property, the owner of the real property shall look exclusively to the guarantor, co-signer, other collateral and the sale of the manufactured home to recover the owner's damages related to the rental of the real property on which the manufactured home is located.

SECTION 35. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

HOUSE COMMITTEE REPORT

07 APR 17 AM 1:26
HOUSE OF REPRESENTATIVES

1st Printing

By: Haggerty H.B. No. 1460

Substitute the following for H.B. No. 1460:

By: Quintanilla C.S.H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended by amending Subdivisions (5), (13), (20), and (23-a) and adding Subdivisions (1-a), (17-a), (18-a), and (25) to read as follows:

(1-a) "Affiliate" means a person who, with respect to a license holder, is under the common control of a third person who has the power to:

(A) directly or indirectly vote 25 percent or more interest in the license holder or an entity under the authority of the license holder;

(B) establish policy for the license holder, directly or through a related person; or

(C) hire, elect, or otherwise designate related persons for the license holder.

(5) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(13) "Lease-purchase" means entering into:

(A) a lease contract for a manufactured home in which the lessor retains title; or

(B) another agreement that contains [~~containing~~] a provision conferring on the lessee an option to purchase a

manufactured home.

(17-a) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(18-a) "Related person" means a person who, directly or indirectly with respect to a license holder:

(A) participates in management, policy decisions, or day-to-day activities subject to this chapter; or

(B) has been found by the department in a final order to be a related person.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(25) "Used manufactured home" means a manufactured home for which a statement of ownership and location has been issued or a manufactured home that has been occupied for any use, except that the term does not include:

(A) a manufactured home used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home;

(ii) was installed but never occupied;

(iii) had a statement of ownership and location issued with respect to the home; and

(iv) was taken back from the consumer because of a first payment default or an agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding a zoning law or any other law, if a manufactured home occupies a specific lot in a municipality, the owner of the manufactured home may move the manufactured home from that lot and place another manufactured home on the lot, provided that the replacement is a newer manufactured home and at least as large in living space as the manufactured home that was initially located on the lot.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National

Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Sections 1201.054(b) and (d), Occupations Code, are amended to read as follows:

(b) If requested by any member of the public, the board shall hold a hearing on any rule that the board proposes to adopt, other than a rule proposed for adoption under emergency rulemaking. The board must provide notice of a hearing under this subsection not later than the 10th day before the date the hearing is scheduled to be held. If a rule is adopted under emergency rulemaking, only the requirements of Chapter 2001, Government Code, apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to an installation standard [~~standards~~] may not take effect later than the 60th day after the date of publication of notice unless:

(1) the board determines that an earlier effective date is required to meet an emergency; and

(2) the installation standard is adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.058, Occupations Code, is amended

to read as follows:

Sec. 1201.058. [~~AMOUNT OF~~] FEES. (a) The board shall establish in reasonable amounts [~~the~~] fees [~~imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary~~] to cover any purpose under [~~the cost of administering~~] this chapter. If the department rules under this chapter provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) A fee imposed by this chapter or a rule under this chapter is:

(1) earned on the date the applicable payment is received by the department; and

(2) not subject to refund.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Sections 1201.101(d), (f), and (g), Occupations Code, are amended to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A

retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person who is not required to hold a license as described by Section 1201.102 [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 7. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ an unlicensed person to assist the installer in performing installation functions if the licensed installer supervises the unlicensed person and maintains a list of all unlicensed persons employed. The director may issue an order to prohibit a person who is not licensed as an installer from

performing installation functions without the supervision of a licensed installer.

(b) A license holder may engage a person who is not licensed under this chapter but holds another license issued by this state to provide goods and services in accordance with that license, including the installation or connection of air conditioning, plumbing, or electrical systems.

(c) A person who [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.~~

[~~(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.~~

[~~(c) In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or a broker's license or who is a related person of that license holder[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 8. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (c-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who is anticipated to be a related person at the time the license is issued;

(2) each [~~the~~] trade name and the name of each business organization [~~name~~] by which the applicant does business under this chapter and[~~, if incorporated, the name registered with the secretary of state and~~] the address of each [~~the~~] business organization; [~~and~~]

(3) the dates on which the applicant became the owner and operator of the business; and

(4) each location to which the license will apply.

(c-1) The applicant shall maintain, at the applicant's principal office or another location designated by the applicant within this state, all records required of the applicant under this chapter.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 9. Section 1201.104, Occupations Code, is amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, or rebuilder's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must,

within the year preceding the date of the application for the person's initial license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must employ at least one related person who meets the requirement described by this subsection.

(b) Each individual who is a related person of the applicant must attend and successfully complete 20 hours of instruction in the law described by Subsection (a). The individual must complete the next course of instruction offered after the date on which the individual becomes a related person. The individual is automatically barred from acting as a related person until the individual successfully completes the course of instruction required by Subsection (a).

(c) An applicant for a salesperson's license must successfully complete the next course of instruction offered after the date the person is licensed. A salesperson who fails to successfully complete the course of instruction described by Subsection (a) will automatically have the person's license suspended until the person successfully completes the course of instruction.

(d) [~~The director may not issue a license to that person until the course of instruction is completed.~~

[~~(b)~~] The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules regarding the content of the course of instruction and the requirements for board approval of

the course of instruction, including a rule requiring the course to be presented live and a rule prohibiting any electronic transmission of the course.

(f) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(g) Successful passage of an [~~(f) An~~] examination must [~~may not~~] be a prerequisite for the successful completion of an initial course of instruction required under this section, but may not be a prerequisite for continuing education courses [~~made a prerequisite of licensing~~].

SECTION 10. Section 1201.105, Occupations Code, is amended to read as follows:

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a

form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amount that is due directly to the retailer under this chapter.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department is unable to obtain timely reimbursements from a surety or the department determines that a surety has experienced a deterioration in its financial condition, the board may direct the director to discontinue the acceptance of bonds issued by that surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each additional branch location of a retailer;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) The director may increase the fee amounts under Subsection (a) with respect to the issuance of an initial, renewal, or subsequent license based on an application described by Section 1201.118.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a license holder or a business entity under which the [~~corporation that is a~~] license holder conducts business; or

(2) location.

(b) A license holder shall notify the department not later than the 10th day before the date of a change described in Subsection (a).

(c) The license holder shall provide to the department [~~director may require~~] a proper endorsement of the original bond to avoid an interruption in the application of the bond to the license.

SECTION 13. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.1125 to read as follows:

Sec. 1201.1125. PROBATIONARY INSTALLER'S OR SALESPERSON'S LICENSE. (a) An applicant for an initial installer's license receives the license only on a probationary basis until the department inspects a sufficient number of installations performed by the installer and fails to find an identified material violation of this chapter or the rules adopted under this chapter. The board,

with the advice of the advisory committee established under Section 1201.251, shall adopt rules to determine the number of successful installations required for termination of the probationary period under this subsection.

(b) The board shall adopt rules under which the director may elect to issue a renewal installer's license or an initial or renewal salesperson's license on a probationary basis.

(c) If the director determines that a salesperson or installer should receive a probationary license under Subsection (b), the director may issue the probationary license on the terms and for the period the director considers reasonable in accordance with the rules adopted under that subsection.

(d) A person who is issued a probationary license under Subsection (b) may appeal by written notice to the director the terms of the license or the period for which the license is issued not later than the 30th day after the date the license is issued. If the license holder appeals under this subsection, the director shall set the matter for a hearing to be conducted by the State Office of Administrative Hearings. The hearing and any related administrative proceedings are considered to be a contested case subject to Chapter 2001, Government Code.

(e) If the license holder does not appeal as permitted by Subsection (d), the probationary license remains in effect for the period and in accordance with the terms specified in the license.

SECTION 14. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. [~~CERTIFICATION AND~~] CONTINUING EDUCATION

PROGRAMS. (a) The department [~~board~~] shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for license holders [~~salespersons regulated~~] under this chapter. A continuing education program must:

(1) be at least six hours in length; and

(2) include the current rules of the department under this chapter and other matters the department considers relevant.

(b) As a prerequisite for license renewal, a license holder must attend a [~~A person who holds a salesperson's license must participate in certification and~~] continuing education course approved or administered by the department under this section [~~programs as provided by Subsection (c)~~].

[~~(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution.~~

[~~(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.~~

[~~(e) A salesperson must complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is issued. To renew a salesperson's license, a salesperson regulated~~

~~under this chapter must complete an additional eight hours of certification and continuing education programs for each renewal. The programs must be presented by a board-approved organization or educational institution and must include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.~~

[~~(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.~~

[~~(g) The board shall suspend the license of a salesperson regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the salesperson's completion of the programs.~~]

SECTION 15. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION. A license issued under this chapter, other than a probationary license, [~~(a) A manufacturer's, retailer's, broker's, or installer's license is valid for one year. A salesperson's license~~] is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

[~~(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder~~

~~pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 16. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. ADDITIONAL PROCEDURES FOR CERTAIN LICENSE APPLICATIONS. The board shall adopt rules providing for the additional review and scrutiny of an initial, renewal, or subsequent license application that involves an applicant or a related person who has previously:

(1) in a final order issued by the department, been found to have:

(A) participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license; or

(B) engaged in activity subject to this chapter without holding the required license;

(2) caused the trust fund to incur unreimbursed payments or claims; or

(3) failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 17. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 18. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 19. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) Not later than the 15th day after the date a consumer exercises the consumer's right of rescission as provided by Section 1201.1521, the retailer shall refund to the consumer all money and other consideration received from the consumer without offset or deduction if the retailer and the consumer entered into a binding written agreement under which the consumer submitted to the retailer a deposit that was a down payment for the home.

SECTION 20. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE,

OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge. The right of rescission applies only to a transaction between a retailer and a consumer.

(b) Subject to rules adopted by the board, a consumer may modify or waive for a bona fide personal financial emergency the consumer's right to rescind the contract without penalty or charge. The rules adopted by the board shall, to the extent practicable, be modeled on the federal rules for the modification or waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226.

SECTION 21. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the person's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 22. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer unless the seller is a consumer in a transaction as provided by Section 1201.456.

(c) A broker in a transaction under this chapter shall

provide to a person who engages the broker's services a written disclosure of any interest that the broker represents in the transaction.

(d) A broker may assist a person who is offering or otherwise engaging in the sale, exchange, or lease-purchase of a manufactured home only if that person holds a license required by this chapter.

SECTION 23. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) The copies of permits and the lists and information required under this section may be provided electronically.

(e) The department shall pay the reasonable cost of providing the materials required [~~copies or the list and information~~] under Subsection (b) or (c) unless the materials are provided electronically.

SECTION 24. Sections 1201.162(a) and (e), Occupations Code, are amended to read as follows:

(a) Before the completion of a credit application or not

later than one day before entering into an agreement for a sale, exchange, or lease-purchase that will not be financed, the retailer [~~or agent~~] must provide to the consumer a written disclosure in a form prescribed by rules adopted by the board. The disclosure form shall:

(1) be printed in at least 12-point type;

(2) address matters of concern relating to the costs and obligations that may be associated with manufactured home ownership, matters to be considered in making any financing decisions, related costs that may arise in acquiring a manufactured home, and other matters the board considers appropriate to promote informed decision-making by the consumer with respect to the acquisition and ownership of a manufactured home; and

(3) conspicuously disclose the consumer's right of rescission. [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as "HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of~~

~~manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with~~

~~the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~]

(e) Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home

or otherwise impair a title or lien position of a person other than the retailer. The consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) constitutes conclusive proof that the notice was delivered. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission immediately ceases on the date the lien is filed with the department.

SECTION 25. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the contract, the consumer may modify or waive the consumer's right to rescind the contract or the waiting period provided by Subsection (a) if the consumer determines that the acquisition of the manufactured home is needed

for a bona fide personal financial emergency. If the consumer has a bona fide personal financial emergency that requires the immediate acquisition of the manufactured home, the consumer shall give the retailer a dated written statement that describes the personal financial emergency, specifically modifies or waives the waiting period or the right of rescission, as applicable, and bears the signature of each consumer who is entitled to the waiting period or right of rescission. On receipt of the written statement described by this subsection, the retailer shall immediately provide to the consumer all of the disclosures required by this subchapter and engage in the transaction without reference to the required waiting period or the right of rescission.

(c) A form printed for the purpose of Subsection (b) may be used only:

(1) with respect to a manufactured home that is to be located in an area that has been declared by the governor to be a disaster area as provided by Section 418.014, Government Code; and

(2) until the first anniversary of the date the governor declared the area to be a disaster area.

SECTION 26. Section 1201.203, Occupations Code, is amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership and location [~~at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect the holder of a lien [~~a lienholder~~] recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

SECTION 27. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the board [~~director~~] or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the board [~~director~~], each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory lien [~~the manufacturer's certificate~~] automatically converts to a security interest in

proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer shall [~~may~~] submit the manufacturer's certificate for that home to the department. If an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not produce the certificate as required by this subsection, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to that effect to each party currently reflected in the department's records as having a recorded lien on the inventory of that retailer. Failure to include the manufacturer's certificate with an application described by this subsection does not impair a consumer's ability to obtain, on submitting an otherwise complete application, a statement of ownership and location free from a lien other than a lien created by or consented to by the consumer.

SECTION 28. Section 1201.205, Occupations Code, is amended to read as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be issued on a board-approved form and must provide:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and address of the new owner, if the owner's address is different from the address of the home;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address of the real property on [~~the county of this state in~~] which the home has been [~~is~~] installed for occupancy, including the name of the county and, if different from the address of the home, the address of the new owner of the home;

(6) in chronological order of recordation, the date of each lien other than a tax lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens which must state:

"On January 1st of each year, a tax lien is placed on a manufactured home in favor of each taxing unit with taxing authority over the real property on which the home is located. To enforce that lien, the lien must be recorded with the manufactured housing division of the Texas Department of Housing and Community Affairs, as provided by law. You may check that division's records through its Internet website or contact the division to identify any recorded tax liens. To identify the amount of unpaid tax liability, contact the taxing unit for the county in which the home is located on January 1st of that year" [~~the signature of the owner~~

~~in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) [~~the location of the home;~~

[~~(10)~~] a statement of whether the owner has elected to treat the home as real property or personal property;

(10) [~~(11)~~] statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(11) [~~(12)~~] any other information the board [~~director~~] requires.

SECTION 29. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the board-approved form [~~made by affidavit~~].

(i) Notwithstanding Subsection (d), if a mortgage loan made in connection with a transaction under this chapter is to be secured by real property that includes the manufactured home, the mortgage loan is funded, and a deed of trust covering the real property and all improvements on the real property is recorded, but the licensed title company or attorney who closed the loan failed to complete the

conversion of the manufactured home to real property in accordance with this chapter, the holder or servicer of the mortgage loan at any time may apply for a statement of ownership and location, including making an election in the application with respect to real property status, and may obtain from the department a certified copy of the statement of ownership and location if, not later than the 60th day before the date of an application for a statement of ownership and location electing real property status, the record owner of the home, as reflected in the department's records, has been provided written notice by certified mail at:

(1) the physical address of the location of the home and, if the address of the record owner is different from that of the location of the home, the mailing address of the owner; and

(2) any other location known or believed after a reasonable inquiry by the holder or servicer of the loan to be an address at which the owner may receive mail or an address of record.

(j) The board by rule shall require evidence that the mortgage loan holder or servicer applying for a real property election has complied with the requirements of this section.

SECTION 30. Section 1201.206, Occupations Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections (g) through (i) to read as follows:

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed and submitted. The consumer shall return the completed application to the retailer. The

retailer shall surrender to the department the manufacturer's certificate in accordance with Section 1201.204 and the manufacturer's statement of origin at the same time that the retailer submits the application for the first statement of ownership and location.

(c) Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(d) Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) If the seller accepts a used manufactured home as part of the consideration for the sale of another manufactured home, the

seller shall provide to the department a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the used manufactured home from the previous owner of the used manufactured home to the seller at the same time that the seller files the completed application for the issuance of a statement of ownership and location for the manufactured home that was sold by the seller in that transaction. If the seller is a retailer, on the application for the issuance of the new statement of ownership and location for the used manufactured home the seller shall indicate whether that home has been added to the inventory of the retailer.

(h) At the time the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that has not been added to a retailer's inventory, the seller shall file with the department a written statement from the tax assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date of the transaction in which the seller acquired the used manufactured home.

(i) If a person who sells a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within the applicable period, the department may assess an additional fee of not less than $100 against the seller. The department may enforce the collection of the additional fee from the seller through a judicial proceeding. The department shall place on the application for the

statement of ownership and location the following statement in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF AT LEAST ONE HUNDRED DOLLARS ($100). A LATE APPLICATION CANNOT BE PROCESSED UNTIL THE FEE DESCRIBED BY THIS PARAGRAPH IS PAID IN FULL."

SECTION 31. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2061 to read as follows:

Sec. 1201.2061. NOTICE OF INSTALLATION. (a) A notice of installation must be filed with the department on the board's prescribed form. If the installation involves a secondary relocation of the home, the notice must be accompanied by:

(1) a copy of the original notice of installation; or

(2) certification that a copy of the original notice of installation has been provided to the chief appraiser of the county in which the home is installed.

(b) The notice required by Subsection (a) may be delivered by certified mail or by electronic transmission of the document in a commonly readable format.

(c) If the method to report the installation of a relocated home is the method specified by Subsection (a)(2), the department may adopt a discounted fee for filing the notice of installation.

(d) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the department shall, on request, provide a tax assessor-collector with

one copy of any reported notice of installation.

SECTION 32. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2062 to read as follows:

Sec. 1201.2062. DIFFICULTY IN DOCUMENTING CHAIN OF TITLE. Notwithstanding any provision in this chapter, if a person acquires a manufactured home and the owner of record and an intervening owner of a lien on the home cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if that person submits an application for the statement and provides:

(1) a supporting affidavit describing the chain of title and the status of any liens; and

(2) any reasonable supporting proof that the director may require.

SECTION 33. Section 1201.207, Occupations Code, is amended to read as follows:

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) As soon as practicable after June 30 of each year, the department shall, except for applications relating to new

manufactured homes and applications accompanied by tax certificates, discontinue its issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. The department shall post on its Internet website a notice as to the anticipated date on which the department intends to begin issuing statements of ownership and location again and the anticipated date on which the department intends to again comply with the period for processing applications prescribed by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the statement of ownership and location in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the record owner of the home and to each [~~any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, [~~either~~] in writing, [~~or~~] by operation of law, or by the department's procedures provided by Section 1201.2062 to document ownership and lien status. After the department has issued a statement of ownership and location, the department may not alter the record of the ownership or lien status

of a manufactured home for activity that occurred before the issuance of the statement of ownership and location unless the department:

(1) obtains the written permission of the owner of record for the manufactured home or a court order; or

(2) determines that an exception is necessary in accordance with rules adopted by the board.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a retailer in the ordinary course of business, regardless of whether a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without the need to provide any notice and is entitled to ownership of the manufactured home free of all liens and entitled to a statement of ownership and location to that effect on payment by the consumer of the purchase price to the retailer. If an existing lien on the manufactured home is perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

SECTION 34. Section 1201.2075, Occupations Code, is amended to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the

lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 35. Section 1201.2076, Occupations Code, is amended to read as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the [~~The~~] department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) The department may rely on a commitment for title insurance, a title insurance policy, or an attorney's title opinion to determine that a lien on real property has been released as required by Subsection (a).

SECTION 36. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) A license holder who sells, exchanges, or lease-purchases a new manufactured home to a consumer shall pay the required sales and use tax on the home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If a license holder sells, exchanges, or lease-purchases a home without paying the required sales and use tax, the payment shall be made from the trust fund for an amount not more than the maximum amount available in bond or other security required by Section 1201.106 for the person's license. The trust fund may file with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund under this section [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 37. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If an appeal is not timely made, the revocation or suspension described in the notice becomes final.

(d) The department shall prohibit any activity with respect to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 38. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

SECTION 39. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or recordation of liens, including tax liens.

SECTION 40. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property on which the home is located. The notice must include the physical address at which the home is currently located. If the person giving notice knows that the person for whom the notice is intended does not reside and is no longer receiving mail at that address, a reasonable effort shall be made to locate the person for whom the notice is intended and to give the person notice at an address where the person receives mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder may enter the real property on which the home is located to remove

the home. The real property owner must disclose to the owner or lienholder seeking to remove the home the location of the home and must grant that person reasonable access to the home. A person who removes the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns or previously owned an interest in the manufactured home, or that person's affiliate or related person:

(1) owns the real property on which the home is located; or

(2) claims that the home is abandoned.

SECTION 41. Sections 1201.219(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on the required [~~a~~] form [~~provided by the department~~]. The form must require the disclosure of the original dollar amount of the lien as well as the name and address of the person in whose name the manufactured home is listed on the tax

roll. The department on its Internet website shall disclose the date of each lien filing and the original amount of the lien claimed in each filing and shall provide a notice that the amount shown does not include additional amounts such as interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) [~~recordation of a lien with the department~~] is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. The tax assessor-collector for any taxing unit with the power to tax the manufactured home shall file any appropriate tax lien on the home. A single filing by a tax assessor-collector is a filing for each taxing unit for which the tax assessor is empowered to collect.

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien [~~security agreement by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

SECTION 42. Section 1201.220, Occupations Code, is amended to read as follows:

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each

manufactured home reported in the notice of installation to the department as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 43. Section 1201.251, Occupation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In accordance with Subsection (d), the board [~~The director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) To ensure that the standards and requirements adopted under this section are recommended by qualified persons, the board may adopt rules that provide for the approval of foundation systems and devices by licensed engineers. A generic installation standard adopted by rule shall first be reviewed by an advisory committee established by the board. The advisory committee must include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices. The advisory committee shall submit a report to the board providing each comment and concern regarding any proposed rule. The members of the committee are not personally liable for providing the advice to the board.

SECTION 44. Section 1201.253, Occupations Code, is amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

SECTION 45. Section 1201.255, Occupations Code, is amended

to read as follows:

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued under this chapter. An uninstalled manufactured home may not be occupied for any purpose [~~issued by the director~~].

(b) An installer may not install a manufactured home at a location that has evidence of ponding, run-off under heavy rains, or bare uncompacted soil unless:

(1) the installer obtains the owner's signature on a form adopted by 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

(2) the owner accepts that risk in writing.

SECTION 46. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect the [~~a manufacturing~~] facility of a license holder.

SECTION 47. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY STATE AGENCIES AND LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 48. Section 1201.302(a), Occupations Code, is amended to read as follows:

(a) To ensure that a manufactured home sold or installed in

this state complies with the standards code, the director may 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 the board [~~director~~].

SECTION 49. Subchapter G, Chapter 1201, Occupations Code, is amended by adding Section 1201.306 to read as follows:

Sec. 1201.306. ENGINEER APPROVAL OF INSPECTION COMPONENTS. In the inspection of the installation of a manufactured home under this chapter the department may use or permit the use of a device or procedure that has been reviewed and approved by a licensed engineer if the use complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 50. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship, other than cosmetic defects.

(b) The manufacturer's warranty is in effect until at least

the first anniversary of the date of initial installation of the home at the consumer's homesite or the date of closing of the consumer's acquisition of a new home that has already been installed, as applicable.

SECTION 51. Section 1201.352, Occupations Code, is amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON NEW HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship, except as provided by Subsection (a-1).

(a-1) The retailer may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the date of the:

(1) [~~date of~~] initial installation of the home at the consumer's homesite; or

(2) closing of the consumer's acquisition of the home if the home has already been installed.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the date of installation of the home, the retailer shall deliver to the consumer a copy of the warranty given to the retailer by the licensed installer.

SECTION 52. Section 1201.353, Occupations Code, is amended to read as follows:

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is considered to be notice to the manufacturer, [~~or~~] retailer, or installer beginning on the third business day after the date the department forwards to the applicable license holder the notice by regular mail or by electronic mail as a scanned copy of the notice.

SECTION 53. Section 1201.354, Occupations Code, is amended to read as follows:

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 54. Section 1201.355, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(d) Notwithstanding any other provision of this section, the department may perform a home inspection at any time if the department determines that there is a reasonable possibility that a

condition of the manufactured home may present an imminent threat to public health or safety. The department shall obtain an inspection search warrant if required by other law.

SECTION 55. Section 1201.356, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (f), (g), and (h) to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer's, or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer, or retailer an appropriate order for corrective action by the manufacturer, installer, or retailer, specifying a reasonable period for completion of the corrective action.

(f) The installer and retailer are responsible for the warranty of installation on new HUD-code manufactured homes. If the department determines that a complaint is covered by the installation warranty, the director shall issue to the installer an order requiring corrective action. If the installer fails to perform the corrective action, the installer is subject to the provisions of Section 1201.357 and the director shall issue the same order for corrective action to the retailer with an additional

period, not to exceed 10 days, allowed for performing the corrective action, unless additional time for compliance is needed, as established by a showing of good cause by the retailer.

(g) If the retailer is required to perform the corrective action under Subsection (f) because of the installer's failure to comply with the director's order, the retailer may seek reimbursement from the installer.

(h) Notwithstanding Subsection (f), the period for performing the required warranty work may be shortened by the director as much as reasonably possible if the warranty work may be necessary to address an imminent threat to public health or safety.

SECTION 56. Section 1201.357, Occupations Code, is amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within the period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked. The consumer may express the

consumer's views at the informal meeting. Following the meeting, the director shall:

(1) resolve the matter by agreed order;

(2) dismiss the matter if no violation is found to have occurred; or

(3) institute an administrative action that may include suspension, revocation, assessment of administrative penalties, or any combination of those actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for

failure to provide warranty service.

SECTION 57. Section 1201.358, Occupations Code, is amended to read as follows:

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR [~~HEARING RESULTS~~]. (a) Failure by the manufacturer, [~~or~~] retailer, or installer, as applicable, to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If~~] the director determines that the order issued under Section 1201.357 was incorrect regarding the warranty [~~that~~] obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the

obligation the right of indemnification against the other.

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 58. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For each installation [~~all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give [~~the manufactured home owner~~] a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The retailer who is responsible for the installation of a new HUD-code manufactured home shall give the manufactured home owner the warranty for the installation. If the retailer subcontracts the installation to a licensed installer, the retailer and installer are jointly and severally liable for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer has no obligation or liability under a warranty for a new manufactured home for any defect described in a written notice received from the consumer more than one year [~~two years~~] after the date of acquisition of a home that has already been installed, as

applicable, or the date of the installation.

SECTION 59. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. ADDITIONAL CORRECTIVE ACTION AUTHORITY. Notwithstanding the limitations and terms of a warranty, if during any inspection the department identifies an aspect of an installation that does not conform to the applicable requirements, the director may:

(1) order the license holder who performed the installation to correct the defect; or

(2) if that license holder is no longer licensed, issue an order directing another licensed installer to correct the installation and reimburse the installer from the trust fund for the costs of that corrective action.

SECTION 60. Section 1201.401, Occupations Code, is amended to read as follows:

Sec. 1201.401. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND. The manufactured homeowners' recovery trust fund is a dedicated [~~an account in the general revenue~~] fund held in trust for carrying out the specific purposes of the fund. Money deposited in the fund as required by this chapter is exempt from the application of Section 403.095, Government Code.

SECTION 61. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 62. Section 1201.404(b), Occupations Code, is

amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose valid claim is the earliest by date and time.

SECTION 63. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable and the director may not pay attorney's fees or actual damages:

(1) to reimburse an affiliate or related person of a license holder, unless the director issues an order under Section 1201.358(c);

(2) to correct a defect that is solely cosmetic in nature; or

(3) to address matters not provided for in this subchapter, unless those matters involve:

(A) a breach of warranty;

(B) a failure to return or apply in accordance with a written agreement money received from a consumer or to which the consumer was entitled; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home, including an agreement for goods or services involving steps, air conditioning, access to utilities, or sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including payments made under Section 1201.358, and may require consumers making claims that may be subject to reimbursement from the trust fund to provide reasonable estimates establishing those costs. The rules adopted by the board may specify procedures and requirements the board considers necessary and advisable for the administration of the trust fund.

SECTION 64. Section 1201.406, Occupations Code, is amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond related to the license; [~~and~~]

(2) investigate the claim;

(3) issue a preliminary determination on the claim; and

(4) give the consumer, the license holder, and any surety related to the license:

(A) an opportunity to resolve the matter by agreement; or

(B) the opportunity to dispute the preliminary determination.

(c) If the matter is not resolved as provided by Subsection (b)(4) before the 30th day after the date the preliminary determination is issued, the preliminary determination automatically becomes final and the director shall make demand on the surety or deduct any payable amount of the claim from the license holder's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

SECTION 65. Section 1201.407, Occupations Code, is amended to read as follows:

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that had been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes in the determination the director considers to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer,

broker, and installer.

(c) Before making a final determination, the department shall provide a license holder a period of 10 days [~~an opportunity~~] to comment on the preliminary determination.

(d) After considering the comments made in relation to the preliminary determination, if any, the director shall issue a final determination.

(e) Not later than the 10th day after the date of its issuance, the final determination may be appealed to the board by giving written notice to the director, who shall submit the matter to the board for consideration at the next meeting for which the matter can be publicly posted in the manner as required by Chapter 551, Government Code.

(f) Any license [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license~~] holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 66. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 67. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. CONSUMER INFORMATION [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund. The director shall make the information available to consumers:

(1) on the department's Internet website; and

(2) in hard-copy format to any member of the public who submits a request for the information.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 68. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly

executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location. If the seller or transferor fails to forward to the purchaser or transferee the necessary, executed documents as required by this subsection, the purchaser or transferee may apply directly for the issuance of a statement of ownership and location.

SECTION 69. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) A person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow another [~~any~~] person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the statement of ownership and location.

SECTION 70. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or

another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, a tax appraiser or a [~~the~~] tax assessor-collector [~~collector~~] may:

(1) apply to the department for a seal;

(2) pay the applicable fee; and

(3) recover that fee as part of the cost of the sale of the home.

(b-1) The tax appraiser or the tax assessor-collector assumes full responsibility for affixing to the home a seal issued to the tax appraiser or the tax assessor-collector under Subsection (b).

(c) A [~~The~~] seal issued to the tax appraiser or the tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 71. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A political subdivision of this state that identifies a manufactured home within its jurisdiction as a salvaged manufactured home may impose with respect to that home an inspection, a requirement for corrective action, or other requirements that would apply if the home were not a salvaged

manufactured home.

(h) A license holder may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvaged and that has not been repaired as required by this chapter and the rules adopted under this chapter. The sale, exchange, lease-purchase, or installation of a salvaged manufactured home for use as a dwelling constitutes an imminent threat to public health or safety. A license holder that participates in a sale, exchange, lease-purchase, or installation in violation of this section:

(1) is subject to the imposition of penalties and other sanctions provided for in this chapter; and

(2) commits an offense punishable as a Class B misdemeanor.

SECTION 72. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and delivering that written approval to the department.

SECTION 73. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4,

Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 74. Section 1201.509, Occupations Code, is amended to read as follows:

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer[~~, salesperson, or agent of the retailer~~] may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

SECTION 75. Subchapter K, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF CERTAIN USED MANUFACTURED HOMES; OCCUPANCY OF HOMES PRIOR TO CLOSING. (a) A retailer may not sell or otherwise transfer a used manufactured home acquired in exchange for another manufactured home before completing the transaction involving the other manufactured home.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 76. Section 1201.551, Occupations Code, is amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY

ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) repeatedly failed to file with the department completed applications [~~timely provide to a consumer an application~~] for statements [~~a statement~~] of ownership and location in the time and manner required by this chapter [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the

director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had any other license issued by this state revoked or suspended by this state or a political subdivision or agency of this state.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which a demand for reimbursement is made. [~~participate in the informal dispute resolution process described by Section 1201.407~~].

SECTION 77. Section 1201.552, Occupations Code, is amended to read as follows:

Sec. 1201.552. HEARING CONCERNING LICENSE. The director may issue an order to revoke, suspend, or deny a new or renewal license. If not later than the 30th day after the date the order is issued the person against whom that order is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the order becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

SECTION 78. Section 1201.553, Occupations Code, is amended to read as follows:

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of an order, decision, or determination of the board or director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 79. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter or the rules adopted under this chapter, or a final order adopted or issued as provided by this chapter, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a license holder [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty

assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) If not later than the 30th day after the date the person receives notice of an administrative penalty the person against whom the penalty is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the administrative penalty becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case.

SECTION 80. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. An order issued by the director under this chapter automatically becomes a final order if the order is not appealed before the 30th day after the date the order is issued. If the person to whom the order is issued files a written request for a hearing with the director, the order is considered to have been appealed and is a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing

before the State Office of Administrative Hearings. The board shall issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSE HOLDER RECORDS. (a) The department may inspect a license holder's records during normal business hours without advance notice if the director determines that an inspection is necessary to:

(1) prevent a violation of this chapter;

(2) protect a consumer or another license holder; or

(3) assist another state or federal agency in an investigation.

(b) The director may request or issue a subpoena for the license holder's records.

(c) If the director determines that it is appropriate to detect and address suspected violations of this chapter, the department may carry out an undercover investigation in accordance with board-adopted rules.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. CRIMINAL PENALTY FOR PERFORMING ACTION WITHOUT PROPER LICENSE. (a) A person who is not required to hold a license under this chapter commits an offense if the person performs an act that requires a license under this chapter.

(b) An offense under this section is a Class B misdemeanor. A subsequent conviction for an offense under this section is

punishable as a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the director has reasonable cause to believe that a person licensed under this chapter has or intends to violate a provision of this chapter or the rules adopted under this chapter, to enforce compliance with this chapter the director may issue to the license holder without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both.

(b) The director may issue an order to a license holder to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to the violation if the license holder in any way is performing an action that relates to the sale, financing, or installation of a manufactured home or relates to providing goods or services in connection with the sale, financing, or installation of a manufactured home, provided that if the matter involves a law that is subject to administration or interpretation by a state agency other than the department, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing the order. The director may not issue an order under this subsection with respect to a matter that is subject to inspection and regulation by a state agency other than the department.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is issued requests a hearing, the director shall set and give notice of a hearing. The hearing is governed by Chapter 2001, Government Code. Based on the

findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 30th day after the date on which an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided under law, the director, after the expiration of the 10-day period following the date the director provides notice to the person, may, without a prior hearing, suspend the person's license. The suspension continues until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension:

(1) the person whose license has been suspended may not perform an act that requires a license under this chapter; and

(2) all compensation received by the person during the period of suspension is subject to forfeiture to the person from

whom the compensation was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) must be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided notice of the time and place of the hearing not later than the third day before the hearing is scheduled to occur.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may prohibit the person from being a related person of a license holder unless the person obtains the prior written consent of the director.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions.

(b) If the person charged with a violation accepts the director's determination with respect to an administrative penalty, the director shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(c) Not later than the 30th day after the date on which the director's determination becomes final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the facts of the violation, the amount of the penalty, or both the facts of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the director's order assessing the penalty is subject to the substantial evidence rule.

(g) If, after judicial review, the penalty is reduced or not assessed, the director as applicable shall remit to the person charged the appropriate amount, including accrued interest if the penalty has been paid, or shall execute a release of any supersedeas bond that was posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be

deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the division director, may institute an action for injunctive relief to restrain the person from continuing the violation and for a civil penalty of not more than $1,000 for each violation and of not more than $250,000 in the aggregate. A civil action filed under this subsection must be filed in a district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 81. Section 2306.0724, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A housing sponsor who fails to file a report in a timely manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Subsection (e) [~~Section 2306.6023~~].

(e) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 82. Section 2306.186, Government Code, is amended by amending Subsection (k) and adding Subsection (m) to read as follows:

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Subsection (m) [~~Section 2306.6023~~]. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(m) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 83. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its Internet website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and provide a hard copy of that information to those persons on request by those persons.

SECTION 84. Subchapter AA, Chapter 2306, Government Code, is amended by adding Section 2306.6024 to read as follows:

Sec. 2306.6024. PARTICIPATION IN DEPARTMENT PROGRAMS. The division may meet the requirements of Sections 2306.6017 through 2306.6019 by participating in the department programs related to those requirements.

SECTION 85. Section 11.432, Tax Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by:

(1) a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) [~~or be accompanied by~~] a verified copy of the

purchase contract showing that the applicant is the purchaser of the manufactured home;

(3) a photostatic copy of the current title page for the manufactured home as that page is displayed on the Internet website of the Texas Department of Housing and Community Affairs; or

(4) the applicable computer records of the Texas Department of Housing and Community Affairs.

(b-1) The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether:

(1) an owner has elected to treat the manufactured home as real property or personal property; or

(2) the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 86. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home, the collector shall enter into a contract under this section with a property owner who:

(1) owns the manufactured home; and

(2) requests the establishment of the escrow account.

SECTION 87. Section 32.03, Tax Code, is amended by amending Subsections (a-1), (a-2), and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than the expiration of the six-month period following the end of the calendar year for which the tax was owed. The tax lien may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against the owner of a new manufactured home who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer title of a manufactured home until all tax liens perfected on the home have been filed in a timely manner with the Texas Department of Housing and Community Affairs and until all personal property taxes on the manufactured home that accrued on each January 1 within 18 months of the date of the sale are extinguished or satisfied and released. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community

Affairs. In this section, "manufactured home" has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed in a timely manner with the Texas Department of Housing and Community Affairs, a taxing unit or an agent of the taxing unit may not use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax lien.

(b-1) A taxpayer is entitled to designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(b-2) Notwithstanding any other provision of law, if a manufactured home was omitted from the tax roll at any time before the second anniversary of the date on which taxes are due, the taxing unit may file a tax lien not later than the 150th day after the date on which the tax becomes delinquent.

(b-3) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. To enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the

taxes are levied, the tax collector shall apply the escrowed amounts to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may increase once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 88. The following provisions are repealed:

(1) Section 1201.054(c), Occupations Code;

(2) Section 1201.059, Occupations Code;

(3) Section 1201.112, Occupations Code;

(4) Section 1201.163, Occupations Code;

(5) Sections 1201.214(c) and (d), Occupations Code;

(6) Section 1201.408, Occupations Code; and

(7) Section 2306.6023, Government Code.

SECTION 89. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 90. This Act takes effect September 1, 2007.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

March 20, 2007
(date)

Sir:

We, your **COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES**

to whom was referred HB 1460 have had the same under consideration and beg to report back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(X) yes ( ) no A fiscal note was requested.

( ) yes (X) no A criminal justice policy impact statement was requested.

( ) yes (X) no An equalized educational funding impact statement was requested.

( ) yes (X) no An actuarial analysis was requested.

( ) yes (X) no A water development policy impact statement was requested.

( ) yes (X) no A tax equity note was requested.

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Flores, Chair	X			
Geren, Vice-chair	X			
Isett, CBO				X
Goolsby	X			
Hamilton	X			
Jones, D.	X			
Miles				X
Thompson	X			
Quintanilla				X

Total
6 aye
0 nay
0 present, not voting
3 absent

CHAIR

BILL ANALYSIS

C.S.H.B. 1460
By: Haggerty
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Manufactured Housing Act was originally created by the Texas Legislature in the mid-1970s and codified into the Occupations Code in 2003. During this time the industry has experienced significant change along with amendments to both the Texas Code and the pre-emptive Federal Manufactured Housing Standards Act.

CSHB 1460 proposes several changes to Chapter 1201 of the Occupations Code. The proposed amendments will provide greater consumer protections through increased enforcement authority granted to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, more stringent procedures required to transfer ownership and clarifying responsibilities of businesses licensed by the Department. CSHB 1460 also further clarifies how property taxes are to be recorded and may be collected with respect to manufactured homes that are designated as personal property. There are also many non-substantive changes to Chapter 1201 made throughout the bill to clarify in statute regulatory agency and licensee practices concerning licensing, installations, consumer disclosures and disciplinary procedures.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs Manufactured Housing Division Board in SECTION 3, 4, 5, 9, 13, 16, 20, 24, 26, 29, 33, 43, 63, and 80 of this bill.

ANALYSIS

SECTION 1. Amends Section 1201.003, Occupations Code, by amending Subdivisions (5), (13), (20), (23-a) and adding Subdivisions (1-a), (17-a), (18-a) and (25) to clarify definitions needed to support proposed amendments to Chapter 1201 of the Occupations Code as follows:

Subdivision (1-a) adds the definition of "Affiliate;"
Subdivision (5) is amended by redefining "Business use;"
Subdivision (13) is amended by redefining "Lease-purchase;"
Subdivision (17-a) adds the definition of "New manufactured home;"
Subdivision (18-a) adds the definition of "Related person;"
Subdivision (20) is amended by redefining "Salesperson;"
Subdivision (23-a) is amended by redefining "Statement of ownership and location;" and
Subdivision (25) adds the definition of "Used manufactured home"

SECTION 2. Amends Section 1201.008, Occupations Code, by adding Subsection (e) providing that the owner of a manufactured home that is legally placed inside the jurisdiction of a municipality is allowed to change homes at that location provided that the replacement home is a newer model and is at least a large as the original home.

SECTION 3. Amends Section 1201.053(a), Occupations Code, requires the administrative rules used by the department in regulating licensees must be adopted by the Manufactured Housing Division Board.

SECTION 4. Amends Section 1201.054(b) and (d), Occupations Code, by clarifying the procedure by which a member of the public may request a hearing, the time frame required to provide notice on rules proposed by the board and gives the board authority to adopt emergency rules in compliance with Chapter 2001 of the Government Code.

SECTION 5. Amends Section 1201.058, Occupations Code, giving the Manufactured Housing Division Board authority to establish reasonable fees to cover any purpose under this chapter; a discounted fee may be granted for electronic filing; a ten dollar fee for each purchase, exchange or lease-purchase will be imposed and the fees will be deposited in the trust fund; states when fees are earned by the department and not subject to refund; and the director may in appropriate circumstances and, in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Amends Section 1201.101(d),(f) and (g), Occupations Code, requiring that a person acting as an installer must have an installers license; allows a broker as possible party who can sponsor a salesperson and clarifies which persons and in what circumstances the advertising restrictions of Subsection (g) do not apply.

SECTION 7. Amends Section 1201.102(a),(b) and (c), Occupations Code, by authorizing a licensed installer to employ and supervise an unlicensed person to assist the installer with his functions and maintains a list of unlicensed persons employed; authorizes the director to prohibit a person who is not a licensed installer from performing installation functions without the supervision of a licensed installer; allows a license holder to engage the use of other state licenses, including installation or connection of air conditioning, plumbing or electrical systems, that are not licensed by this Chapter; removes a person who holds a retailer's license or a broker's license or who is a related person of that license holder from having to apply for a salesperson's license.

SECTION 8. Amends Section 1201.103, Occupations Code, by amending Subsection (a) and (d) and adding Subsection (c-1) to specify what must be included when filing an application with the director for a manufacturer, retailer, broker, rebuilder or installer license.

SECTION 9. Amends Section 1201.104, Occupations Code, provides by stating the educational requirements necessary to obtain a license under this Chapter and adds the requirement of passing an examination prior to the issuance of an initial license issued under this Chapter. This section also requires the board to adopt rules regarding the content of the instruction and requires the course to be live.

SECTION 10. Amends Section 1201.105, Occupations Code, by clarifying the security requirements for a licensee under this Chapter and establishes the board's authority reject a bond issued by a company in poor financial condition.

SECTION 11. Amends Section 1201.106, Occupations Code, by amending Subsection (a) and adding Subsection (a-1) to establish new security amounts required for an installer license and empowers the board with the authority to require an additional security when a previous licensee is applying for a new license after leaving the state with un-reimbursed expenses from a previous license.

SECTION 12. Amends Section 1201.108, Occupations Code, clarifies when a change of ownership or location does not require a new bond as well as how and under what time frame a licensee must notify the department of an ownership or location change.

SECTION 13. Amends Subchapter C, Chapter 1201, Occupations Code, by adding Section 1201.1125 to create a probationary license in the case of new Installers. A probationary license will convert to a permanent license only after the completion of a set number of installations by the prospective licensee. The number of inspections will be determined by the board in the administrative rules. Additionally, establishes provisions to allow the board to adopt rules which allow the director to issue renewal installer's and salesperson's licenses as well as issue probationary licenses in the even the director determines the installer or salesperson should receive a probationary license. In the event an installer or salesperson is issued a probationary license they are allowed an appeals procedure to contest the director's issuance of a probationary license.

SECTION 14. Amends Section 1201.113, Occupations Code, establishes new criteria for conducting continuing licensee education under this Chapter.

SECTION 15. Amends Section 1201.114, Occupations Code, requires all licenses issued under this Chapter, other than a probationary license, are valid for two years.

SECTION 16. Amends Subchapter C, Chapter 1201, Occupations Code, by adding Section 1201.118 to require the board to adopt rules that provide a greater level of scrutiny for individuals applying to be licensed under this Chapter when they have been previously licensed under this Chapter but have had their previous licensed suspended or revoked, have been found to have operated without a license when one was required, cause the trust fund to incur unreimbursed payments or claims, or failed to fulfill the terms of a final order.

SECTION 17. Amends Section 1201.1505, Occupations Code, allows a retailer to require a deposit on a specially ordered manufactured home.

SECTION 18. Amends Section 1201.151, Occupations Code, changes the language of the heading to read "REFUNDS."

SECTION 19. Amends Section 1201.151, Occupations Code, by amending Subsection (a) and adding Subsection (e) to require that a retailer is responsible for the return of a consumer's money when that consumer requests a refund of a deposit.

SECTION 20. Amends Section 1201.1521, Occupations Code, stating that the consumers "right of rescission" only applies to a transaction between a retailer and a consumer. Additionally, adds Subsection (b) to allow a consumer to formally waive their "right of rescission" in the case of a "bona fide" emergency, subject to rules adopted by the board.

SECTION 21. Amends Section 1201.158, Occupations Code, requires a licensed salesperson can work for only one sponsoring licensee at a time.

SECTION 22. Amends Section 1201.159, Occupations Code, by amending Subsection (a) and adding Subsection (c) and (d) to clarify the disclosures a broker must give and in which circumstances a broker may assist in the process of a sale, exchange, or lease-purchase of a manufactured home.

SECTION 23. Amends Section 1201.161(a), and (d) and adding Subsection (e), Occupations Code, by stating that a licensed retailer or installer only need a permit from the Texas Department of Transportation to transport a manufactured home and allows the department and TxDOT to electronically exchange information required by this Chapter.

SECTION 24. Amends Section 1201.162(a) and (e), Occupations Code, by removing the disclosure language previously codified by this subsection so that the board may provide the same disclosures and additional disclosures as may be necessary on a standardized form prescribed by rules adopted by the board. Additionally, requires the consumer's signature on a copy of the promulgated form as acknowledgement that they have received the notice.

SECTION 25. Amends Section 1201.164, Occupations Code, by deleting "INSTALLMENT" from the header and clarifying the circumstances a retailer must provide a consumer with a fully contract 24 hours before the contract is fully executed. Additionally, codifies the conditions and process needed for a consumer to waive their right of rescission in a personal financial emergency and allows a form to be used for the purposes of Subsection (b) only if the governor declares the area where the manufactured home is to be located a disaster area and until the first year the governor declared the area a disaster area.

SECTION 26. Amends Section 1201.203, Occupations Code, by clarifying the board's authority, rather than the director's authority, to adopt rules and forms necessary under this Chapter.

SECTION 27. Amends Section 1201.204, Occupations Code, by requiring a retailer to submit the original Manufacturer's Certificate along with the application for the initial statement of ownership and location.

SECTION 28. Amends Section 1201.205, Occupations Code, by making clarifications concerning the information required on a statement of ownership and location form.

SECTION 29. Amends Section 1201.2055, Occupations Code, by amending Subsection (b) and adding Subsections (i) and (j) to state the requirement that an application for the issuance of a new statement of ownership and location must be executed before a notary, and the process by which the holder or service of a mortgage loan involving real property and a manufactured home may apply for a statement of ownership and locations when the title company or attorney who closed the loan failed to complete the conversion of the manufactured home to real property in accordance with this Chapter; requires the board to adopt rules to require evidence that the mortgage loan holder or service applying for a real property transaction has compiled with the necessary requirements.

SECTION 30. Amends Section 1201.206, Occupations Code, by amending Subsections (b), (c), (d) and (f) and adding Subsections (g), (h) and (i) to clarify the process and timing requirements a retailer must comply with when submitting an application for a statement of ownership and location. This section also states the process a retailer must follow when accepting a used manufactured home as part of the consideration for the sale of another manufactured home. Additionally, if a manufactured home has not been added to a retailer's inventory, the seller must file with the department a statement form the tax-assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date the seller acquired the used manufactured home. This section also establishes that an additional fee may be assessed for any transfer of ownership that is not reported within 60 days of the date of the transfer.

SECTION 31. Amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.2061 stating how notices of installation must be filed with the department and that the department must provide the tax assessor-collector with monthly installation reports.

SECTION 32. Amends Subchapter E, Chapter 1201, Occupations Code, by adding Section 1201.2062 by providing that if a person acquires a manufactured home and the owner of record and an intervening owner of a lien cannot be located to assist in documenting the chain of title, the department can issue a statement of ownership and location to the person claiming ownership if they provide a supporting affidavit describing the chain of title and any reasonable proof that the director may require.

SECTION 33. Amends Section 1201.207, Occupations Code, by establishing that as soon as practicable after June 30th of each year, the department shall discontinue the issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. Initial applications for statements of ownership and location as well as applications that include all necessary tax receipts will be processed as usual. This section also provides that once a statement of ownership and location has been issued, that record may not be altered or additional liens recorded for any period prior to the transfer of ownership without written permission from the current owner of record or a court order or determines that an exception is necessary in accordance with rules adopted by the board. If the transfer involves a new home purchased from a licensed retailer, the new owner is considered to be a bona fide purchaser for value without notice and is entitled to ownership of that home free and clear of all previous liens that may have been in existence.

SECTION 34. Amends Section 1201.2075, Occupations Code, by clarifying the process of converting a home from personal property to real property.

SECTION 35. Amends Section 1201.2076, Occupations Code, by clarifying the process of converting a home from real property back to personal property.

SECTION 36. Amends Section 1201.208, Occupations Code, by clarifying the existing language concerning the licensee's responsibility to pay sales and use tax and adds that unpaid sales and use tax shall be paid from the trust fund for an amount not more than the maximum amount available from the bond security posted by the licensee; authorizes the trust fund to file

with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund.

SECTION 37. Amends Section 1201.210, Occupations Code, by amending Subsection (c) and adding Subsection (d) to clarify that unless the owner of a home appeals the revocation or suspension of their statement of ownership and location within 30 days of the notice, the notice becomes final without the need for a hearing.

SECTION 38. Amends Section 1201.214(b), Occupations Code, by making a non-substantive change.

SECTION 39. Amends Section 1201.216(a), Occupations Code, by clarifying that once a manufactured home is elected to be treated as real property or changed to business use or for salvage, the home is no longer a manufactured home for purposes of regulation under this Chapter or for the purposes of recording of liens, including tax liens.

SECTION 40. Amends Section 1201.217, Occupations Code, by amending Subsection (b) and (c) and adding Subsection (f) to modify the notices required in order to declare a home abandoned and establishes that when the home owner and the land owner are in any way connected the home may not be declared abandoned.

SECTION 41. Amends Section 1201.219(a), (b) and (c), Occupations Code, by clarifying the process an inventory lien is perfected on manufactured homes. Additionally, this section specifies information that must be submitted to the department when filing a tax lien and the information the department must display in its records. This section also provides that despite the possible existence of inventory liens, a buyer in the ordinary course is entitled to receive their statement of ownership and location free and clear of all such liens.

SECTION 42. Amends Section 1201.220, Occupations Code, by clarifying the information to be included in the monthly reports sent to county tax assessors regarding the transfer and installation of homes within their taxing jurisdiction

SECTION 43. Amends Section 1201.251, Occupations Code, by amending Subsection (a) and adding Subsection (d) to require the board, rather than the director, has the authority to adopt standards and requirements for the installation and construction of manufactured homes under this Chapter. This section also allows the board to form and consult an advisory committee made up of industry representatives concerning proposed administrative rules that may be required to administer this Chapter.

SECTION 44. Amends Section 1201.253, Occupations Code, by modifying how the director publishes notice and conducts a public hearing prior to adopting, amending or approving a new standard or requirement.

SECTION 45. Amends Section 1201.255, Occupations Code, by making non-substantive changes clarifying that unless a home is properly installed it may not be occupied for any reason. Additionally, if the site of installation appears that it may be an unsuitable location for installation, the home may not be installed there unless the home owner signs a department form assuming responsibility for the risk of installing the home on the site.

SECTION 46. Amends Section 1201.301(b), Occupations Code, by expanding the inspection authority of the department to include the facilities of any licensee.

SECTION 47. Amends Section 1201.302, Occupations Code, by changing the heading of the section to included state agencies and local governmental units.

SECTION 48. Amends Section 1201.302(a), Occupations Code, by making a non-substantive change clarifying that the board has the authority to sub-contract home inspections.

SECTION 49. Amends Subchapter G, Chapter 1201, Occupations Code, by adding Section 1201.306 to allow the department to use or permit the use of a device or procedure for the

inspection of an installation of a manufactured home that has been reviewed and approved by a licensed engineer.

SECTION 50. Amends Section 1201.351(a) and (b), Occupations Code, by eliminating cosmetic defects as Manufacturer warranty responsibility. This section also clarifies when a Manufacturer warranty begins under various sale situations.

SECTION 51. Amends Section 1201.352, Occupations Code, by renaming the header to read: "RETAILER'S WARRANTY ON NEW HOME" and clarifying the warranty responsibilities of a retailer with regard to installation, cosmetic defects and requires that the retailer must deliver to the consumer, within 30 days of that actual installation, a copy of the warranty given to the retailer from the licensed installer.

SECTION 52. Amends Section 1201.353, Occupations Code, by making non-substantive changes to the current statute adding installers to the list of licensees to be put on notice when there is a need for warranty service. This section also states when a license holder is deemed to have been given notice after the department mails or electronically mails the notice to the license holder.

SECTION 53. Amends Section 1201.354, Occupations Code, by making a non-substantive change that adds installers to the list of licensees required to take action under a warranty.

SECTION 54. Amends Section 1201.355, Occupations Code, by amending Subsection (a) and (b) and adding Subsection (d) to make a non-substantive change that adds installers to the list of licensees who may be subject to or request a consumer complaint home inspection by the department. This section also allows the department to perform an inspection at any time if the department determines there is a condition of the home that may present an imminent threat to public health or safety; requires the department to obtain an inspection search warrant if required by other law.

SECTION 55. Amends Section 1201.356, Occupations Code, by amending Subsections (a), (b) and (c) and adding Subsections (f), (g) and (h) to add installers to the list of licensees subject to department orders to resolve a legitimate consumer complaint and establishes an order of responsibility when both a licensed installer and a licensed retailer are jointly and severally liable to resolve the complaint.

SECTION 56. Amends Section 1201.357, Occupations Code, by adding installers to the list of licensees subject to dispute resolution and possible disciplinary action for failing to respond in accordance with a department order.

SECTION 57. Amends Section 1201.358, Occupations Code, by renaming the header to read 'FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR' and making non-substantive changes adding installers to the list of licensees subject to license suspension or revocation for failing to respond in accordance with a department order.

SECTION 58. Amends Section 1201.361, Occupations Code, by clarifying the responsibilities of delivering the installation warranty to a consumer. This section also states an installer has no warranty liability for a new manufactured home a year after the date of acquisition of a home that has already been installed or the date of installation.

SECTION 59. Amends Subchapter H, Chapter 1201, Occupations Code, by adding Section 1201.362 to authorize the director to order the license holder who performed an installation not in conformance with the requirements of this Chapter to correct the defect, or, if the license holder in no longer licensed, the director may use another licensed installer to correct the defect and reimburse the licensed installer from the trust fund.

SECTION 60. Amends Section 1201.401, Occupations Code, by designating the Homeowners' Recovery Trust Fund as a dedicated fund to be held in trust and used for a specific purpose.

SECTION 61. Amends Section 1201.402(a), Occupations Code, by making a non-substantive change regarding the administration of the trust fund.

SECTION 62. Amends Section 1201.404(b), Occupations Code, by deleting attorney's fees as reimbursable from the trust fund where a consumer complaint is involved.

SECTION 63. Amends Section 1201.405, Occupations Code, by adding Subsections (f) and (g), clarifying what consumer complaint expenses may be reimbursed out of the trust fund and establishes the authority of the board to adopt rules for the administration of the trust fund.

SECTION 64. Amends Section 1201.406, Occupations Code, by establishing a procedure in which a consumer will be reimbursed from the trust fund for an unresolved complaint against a licensee

SECTION 65. Amends Section 1201.407, Occupations Code, by clarifying the process by which a licensee may dispute a determination liability and responsibility made by the department.

SECTION 66. Amends Section 1201.409(a) and (b), Occupations Code, by making non-substantive changes with regard to the reimbursement of the trust fund by deleting language that required reimbursement that resulted from an act or omission of the license holder who filed the bond or other security.

SECTION 67. Amends Section 1201.410, Occupations Code, by renaming the header to read: "CONSUMER INFORMATION" and by allowing the posting of notices concerning consumer's rights to recover from the trust fund on the department's website as well as hard copies for members of the public that submit a request for the information.

SECTION 68. Amends Section 1201.451(b), Occupations Code, by changing the time frame for the seller to file the application to transfer the ownership of a manufactured home from 30 to 60 days. This section also states that if a seller fails to file an application, the purchaser may apply directly for the statement of ownership and location.

SECTION 69. Amends Section 1201.457(b), Occupations Code, by making non-substantive changes to the language concerning the sale of a home that is not to be used as a dwelling.

SECTION 70. Amends Section 1201.459, Occupations Code, by allowing local tax authorities to apply for a state seal to establish an identification number for a manufactured home when needed and requires the tax authorities to actually affix the seal to the manufactured home.

SECTION 71. Amends Section 1201.461, Occupations Code, by adding Subsections (g) and (h), clarifying how a local government may inspect, require corrective action or other requirements on a salvaged home that is within their jurisdiction. This section also states it is a punishable Class B misdemeanor as well as subject to other penalties and sanctions for a license holder to sale, exchange, lease-purchase or install a salvaged home that has not been repaired as required by this Chapter.

SECTION 72. Amends Section 1201.503, Occupations Code, by clarifying how to legally alter a new home after it has been inspected and labeled at the manufacturer's facility.

SECTION 73. Amends Section 1201.506(a), Occupations Code, by requiring licensed retailers and brokers to comply with applicable provisions of the Finance Code.

SECTION 74. Amends Section 1201.509, Occupations Code, by prohibiting a retailer for refusing to refund a consumer's deposit, except as provided in Section 1201.151.

SECTION 75. Amends Subchapter K, Chapter 1201, Occupations Code, by adding Section 1201.513 allowing a retailer to legally sell a home that has been taken as a trade-in.

SECTION 76. Amends Section 1201.551, Occupations Code, by allowing for the suspension or revocation of a license for repeated violations regarding the filing of applications for statements of ownership and location. This section also allows the director to suspend or revoke a license if the license holder's surety refuses to pay a final claim paid from the trust fund.

SECTION 77. Amends Section 1201.552, Occupations Code, by allowing a licensee to request an administrative hearing within 30 days of an order to suspend, revoke or deny a license.

SECTION 78. Amends Section 1201.553, Occupations Code, by making non-substantive changes regarding the request for judicial review of any action by the board.

SECTION 79. Amends Section 1201.605, Occupations Code, by providing the director with enforcement authority against any license holder that fails to comply with this Chapter. This section also clarifies the schedule of fines for licensees and allows the director some discretion in determining the amount of an administrative penalty based on the criteria listed in this sub-section. This section also states the process of notice and finalization of administrative penalties assessed.

SECTION 80. Amends Subchapter M, Chapter 1201, Occupations Code, by adding Sections 1201.607 through 1201.611 to clarify how an order issued by the director becomes final if the order is not appealed before the 30th day after the order was issued; sets out appeal procedures; details the criteria for inspection of a licensee's records, allowing the use of "sting" operations and subpoenas in accordance with department rules when such actions are deemed to be necessary; makes unlicensed activity covered by this Chapter a Class B misdemeanor for a first offense and subsequent convictions shall be punished as Class A misdemeanors; allows the director to issue cease and desist orders when he or she has reason to believe such an action is necessary to protect consumers and force compliance with this Chapter; establishes the procedures for issuing and protesting such orders; allows for an appeal process; details how administrative penalties and sanctions are to be applied by the board in their enforcement of the rules they adopt; details how penalties assessed are to be paid and the procedure to follow when a licensee is financially unable to pay; states proceeds collected under this provision are to be deposited in the trust fund; the director may impose an administrative penalty or seek injunctive relief against a person in violation of a cease and desist order; the director my suspend a license holders licenses if they are violating a cease and desist or fails to pay an administrative penalty; specifies what happens when a persons license is suspended; specifies how a license holder can appeal an order of suspension; states that a person with a suspended license cannot be a related person as it is defined in this Chapter unless the person obtains prior written permission from the director; and addresses the process and procedure for assessing sanctions and penalties under this Chapter and how those sanctions and penalties are to be paid and sets out procedures for judicial review or appeals.

SECTION 81. Amends Section 2306.0724, Government Code, by amending Subsection (d) and adding Subsection (e) to allow the department to assess administrative penalties under Subsection (e) on housing sponsors who fail to file reports in a timely manner. In determining the administrative penalty, the department is required to consider: seriousness of the violation; history of previous violations; amount necessary to deter future violations; efforts made to correct the violation and any other matters that justice may require.

SECTION 82. Amends Section 2306.186, Government Code, by amending Subsection (k) and adding Subsection (m) to allow the department to assess administrative penalties under Subsection (m) on development owners who fail to contract for third-party needs assessments and make identified repairs as required by this section, in determining the administrative penalty the department is required to consider: seriousness of the violation; history of previous violations; amount necessary to deter future violations; efforts made to correct the violation and any other matters that justice may require.

SECTION 83. Amends Section 2306.6022(b), Government Code, by allowing the department to provide copies of its policies and procedures on request as well as posting them on its website.

SECTION 84. Amends Subchapter AA, Chapter 2306, Government Code, by adding Section 2306.6024 to allow the Manufactured Housing Division to participate in Standards of Conduct, Equal Employment Opportunity and State Employee Incentive Programs in conjunction with the Texas Department of Housing and Community Affairs for cost savings initiatives.

SECTION 85. Amends Section 11.432, Tax Code, by amending Subsection (a) and adding Subsection (b-1) to allow a photo static copy of the department's record of ownership as it is displayed on their website to serve as adequate proof of ownership when filing for a homestead exemption for property taxes. This section also clarifies that a home owner is entitled to claim a homestead exemption regardless of whether the home is being treated as personal or real property.

SECTION 86. Amends Section 31.072, Tax Code, by adding Subsection (i), requiring a tax collector, upon request from a manufactured home owner, to establish a property tax escrow account to provide for the payment of property taxes collected by the collector on the property owner's manufactured home.

SECTION 87. Amends Section 32.03, Tax Code, by amending Subsections (a-1), (a-2) and (b) and adding Subsections (b-1), (b-2) and (b-3) to delete obsolete language that refers to filing deadlines granted in previous legislation but that have long since expired. The section also clarifies how all future tax liens are to be filed and that unless the tax liens are properly filed they may not be enforced on a buyer in the ordinary course of business that purchased the home from a licensed retailer. This section also clarifies that ownership of a home may not be transferred unless all timely filed tax liens have been extinguished or satisfied as well as all taxes that have accrued over the within the 18 months immediately prior to the desired transfer but are not yet subject to filing with the department. Additionally, unless a tax lien has been timely filed with the department, a tax unit and their agents are prohibited from using a tax warrant in an attempt to foreclose and collect taxes never filed with the department. This section also adds text to clarify that a taxpayer has the right to designate which tax year will be credited with a particular tax payment. Once a tax payer pays all of the amounts owing for a designated year, the taxing unit must issue a receipt indicating that all taxes that particular year have been paid. Language has also been added to this section that will allow a taxing unit 150 days from the date taxes would have become delinquent to add a home omitted from its tax roll for either or both of the previous two years to be added back and taxed according. This section allows a taxing unit to estimate and collect payment for current year taxes that have accrued but have not been assessed in order to allow a transfer of ownership to occur. If the estimate does not cover all taxes once they are actually assessed the new owner may be held liable for the unpaid balance.

SECTION 88. Repeals the following sections of the Occupations Code: Section 1201.054(c); Section 1201.059; Section 1201.112; Section 1201.163; Section 1201.214(c) and (d), Section 1201.408 and repeals Section 2306.6023 of the Government Code.

SECTION 89. Change in law made to provisions of the Tax Code only applies to an ad valorem tax year that begins on or after January 1, 2008.

SECTION 90. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill was a legislative council "type only" draft and the substitute is a legislative council "form" draft. There are numerous substantive changes between the original filed version and the committee substitute, including many new sections. A list of new sections in the committee substitute, which none of the language was included in the originally filed version, are listed as follows: Sections 4, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 29, 32, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 81, 82, 83, 84, 88, and 89.

There are also changes due to combining previously filed section language with new language. In Section 1 there are additions and changes to the definitions of: "affiliate," "business use," "lease-purchase," "related person," "salesperson," and "statements of ownership and location." Section 5 includes additional language regarding fees, the board's authority to establish fees, refund of fees and discounts in fees. Section 11 changes the bond requirement for an installer

from $50,000, as it was previously stated in Section 13 of the filed version, to $25,000 in the committee substitute. Additionally, Section 11 empowers the board to require additional bond amounts if a previous licensee is re-applying after leaving previously un-reimbursed expenses. Section 30 of the committee substitute changes the timing requirements for a retailer submitting an application for a statement of ownership and location from 45 days, as previously stated in the filed version in Section 18, to 60 days. Section 33 combines previous language from several sections and includes new language to allow the department to delay processing statements of ownership and location every June 30th, in order to process and record tax liens filed by taxing authorities prior to the June 30th statutory deadline. Section 80 also combines previous language from several sections and includes new language addressing how orders, penalties and sanctions are issued by the director; how orders, penalties and sanctions are appealed by licensees; allows for the use of "sting" operations and subpoenas by the director when deemed necessary; places criminal levels of punishment on unlicensed activity; and how penalties are supposed to be paid.

There were several sections struck from the original filed version of HB 1460. The list of struck provisions from the filed version of HB 1460 are as follows: Section 4, the definition of "manufactured home" or "manufactured housing;" Section 7, the definition of "Fund"; Section 33, with changes to the Finance Code allowing for an exemption to Finance Code Section 347.254 when a consumer establishes an escrow account with a tax-collector; and Section 34, with changes to the Finance Code restricting the recovery of a land owner to only a consumer or use of a possessory lien when seeking recovery for unpaid lot rent.

SUMMARY OF COMMITTEE ACTION

HB 1460

March 20, 2007 10:30 AM or upon final adjourn./recess

Considered in public hearing
Committee substitute considered in committee
Testimony taken in committee (See attached witness list.)
Reported favorably as substituted

11
1

WITNESS LIST

HB 1460
HOUSE COMMITTEE REPORT
Licensing & Administrative Procedures Committee

March 20, 2007 - 10:30 AM or upon final adjourn./recess

Registering, but not testifying:

On: Irvine, Tim (Texas Department of Housing and Community Affairs Manufactured Housing Division)

- Committee Substitute (#1 by Quintanilla)

For: Krause, Sherman (Self and Tax Assessor-Collectors Association of Texas)
Philpot, Larissa (City of Nacogdoches)

Against: Jewell, Kevin (Self)

Registering, but not testifying:

For: Anderson, Jody (Texas Mfgd. Housing Assoc.)
Caraway, Luanne (Self and Tax Assessor-Collectors Assn of Texas)
Murphy, Tavie (Self and Tax Assessor/Collector Association of Texas)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 27, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 1st House, Substituted: a negative impact of ($2,051,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($1,056,388)
2009	($994,975)
2010	($994,975)
2011	($994,975)
2012	($994,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926	Change in Number of State Employees from FY 2007
2008	($918,000)	($138,388)	$918,000	1.5
2009	($918,000)	($76,975)	$918,000	1.0
2010	($918,000)	($76,975)	$918,000	1.0
2011	($918,000)	($76,975)	$918,000	1.0
2012	($918,000)	($76,975)	$918,000	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the purposes of the fund. Administrative penalties and $10 of each statement of ownership and location fee would be deposited to the credit of the fund. The executive director of the Texas Department of Housing and Community Affairs (TDHCA) would administer the fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the specific purposes of the fund. Administrative penalties—estimated to be $18,000 annually—now dedicated to the General Revenue Fund 0001 would be dedicated to the trust fund. In addition, $10 of each $55 fee collected for a statement of ownership and location and currently deposited to Fund 0001 would be deposited to the trust fund. TDHCA estimates that 90,000 statements are sold each fiscal year. The table above reflects

the Comptroller's estimate of revenue loss to General Revenue and subsequent gain to the Trust Fund.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 20, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, and regulation of manufactured housing.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Introduced: a negative impact of ($1,568,720) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($792,080)
2009	($776,640)
2010	($776,640)
2011	($776,640)
2012	($776,640)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *APPROPRIATED RECEIPTS* 666	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926
2008	($600,000)	($192,080)	($905,000)	$600,000
2009	($600,000)	($176,640)	($897,200)	$600,000
2010	($600,000)	($176,640)	($897,200)	$600,000
2011	($600,000)	($176,640)	($897,200)	$600,000
2012	($600,000)	($176,640)	($897,200)	$600,000

Fiscal Year	Change in Number of State Employees from FY 2007
2008	5.0
2009	5.0
2010	5.0
2011	5.0
2012	5.0

Fiscal Analysis

The bill would amend the Tax Code, the Occupations Code, and the Finance Code, relating to the

taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption would be claimed on a personal property manufactured home and that a taxing authority would rely on the computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. The bill would note the requirements necessary for a tax assessor-collector to enter into a contract to establish an escrow account with a property owner for the payment of property taxes.

The bill would establish that a valid tax lien filed timely with TDHCA would be deemed notice of a lien, require the payment of personal property taxes accrued on each January 1 within 18 months of the date of sale in order to transfer title, place limits on the use of tax warrants in foreclosure, and give taxpayers the right to designate payments to a tax year.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow, apply payments when due, and notify a new owner of any liability that might be due. The bill would allow a prospective buyer (when seeking certification from a tax assessor-collector that taxes have been paid) to pay two years back taxes if a home had been omitted from the tax rolls by mistake.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. In addition, the bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000).

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as the Manufactured Homeowner's Recovery Fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 45 days. Failing to meet the deadline, if repeatedly violated, would lead to the revocation or suspension of a license and allow the board to assess administrative penalties ranging from $1,000 for a first violation to $4,000 for each subsequent violation. Persons not licensed or failing to take required actions would face an administrative penalty not to exceed $10,000, plus other reasonable fees and expenses. Persons operating without a license would commit an offense punishable as a class A or B misdemeanor and would be liable for damages. Violations would be subject to an administrative penalty not to exceed $1,000 per day for each violation. Penalties would be deposited to the credit of the fund.

The bill would amend Chapter 347 of the Finance Code, relating to the rights and responsibilities of an owner of a security interest in a home and the precedence of liens on a home.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

Methodology

The bill would broaden the definition of a manufactured home to include homes smaller in size than "HUD-code" manufactured homes, sometimes referred to as "park models." Because there are no data on the number of these homes in existence, the fiscal impact of this provision cannot be estimated.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption may be claimed on a personal property manufactured home and that a taxing authority would rely on the

computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. This language would not change current law regarding the eligibility of mobile homes for homestead exemptions, and it would not create a significant cost to local governments or to the state.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000). There would be no fiscal impact to the state for this change.

The bill would authorize administrative penalties ranging from $1,000 to $10,000, plus other reasonable fees and expenses for violations.

The administrative cost estimate to the Comptroller's Office reflects the costs associated with the handling of complaints, administrative hearings, and mandates, which would require two hearings examiners with associated administrative costs. This cost is expected to be $240,840 per year and require 2 full time employees for each year. This cost is not reflected in the above table.

The administrative cost estimate to TDHCA reflects costs related to disciosing the name and address of the person obligated on the taxes and amount of each lien on a tax lien recording. The bill would also require TDHCA to provisionally record a lien on a record that reflects a taxpayer name that is different from the name of the owner and requires TDHCA to notify the appraisal district of the disparity and allow the taxing authority to resubmit an amended tax lien reflecting the name of the owner of the home within 60 days of notification. The cost is expected to be $905,000 in fiscal year 2008 and $897,200 per year beginning in fiscal year 2009 and require 3 full time employees for each year.

The bill would create the General Revenue-Dedicated - Homeowners' Recovery Fund and terminate the Manufactured Homeowners' Recovery Trust Fund in the General Revenue Fund. This fund would generate approximately $900,000 each year in fees and TDHCA anticipates that approximately $300,000 each year will be expended for carrying out the specific purposes of the fund.

The Office of the Attorney General (OAG) reports that the Manufactured Housing Division of the Texas Department of Housing and Community Affairs currently has no staff attorneys. The Department relies on the OAG's Administrative Law Division (ALD) for all general counsel work, enforcement work, and administrative law litigation.

Greater need for enforcement in this industry has been identified as a problem affecting the rights of consumers. Sec. 18, subsection (g) creates new enforcement authority for the Department that will require action by ALD. Sec. 32 creates additional new due process hearings and suits for injunctive relief and civil penalties--the ALD estimates that this will have significant impact in order to accomplish the goal of greater enforcement. As a result, the OAG would require 1 attorney in each fiscal year 2008-2012.

It is estimated that one FTE attorney will also be required to assist the Department in analyzing and implementing this bill, based on the complexity of the issues--taxing, lien recordation, and enforcement, and based on historic use of general counsel services for this purpose by the Department.

The OAG's Administrative Law Division would require, in each fiscal year 2008 -2012, one Assistant Attorney General II (AAG) to handle enforcement work and one AAG IV to handle general counsel work associated with passage of the bill. The cost in fiscal year 2008 is $192,080 and $176,640 in each fiscal year thereafter. The OAG will require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

There would be a technology cost to the Department of Housing and Community Affairs of $7,800 in fiscal year 2008 and $4,800 in fiscal year 2013. There would also be a one-time technology impact to the Office of the Attorney General of $2,787 in fiscal year 2008 for network stations and software.

Local Government Impact

Costs to local tax collectors would depend on the number of instances in which personal property taxes have not been levied by the taxing unit and there is a prospective buyer of the manufactured home. Most of these costs would be for letterhead, postage, and personnel time to collaborate with TDHCA and new owners to clear up any outstanding tax or escrow issues.

In addition, the bill could have a negative fiscal effect on local taxing authorities by deleting liens not matching TDHCA records. Without a lien on file, a taxing authority would see a loss of tax collection revenue.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, JM, AH, SJS, KJG

ADOPTED

APR 25 2007

Robert Haney
Chief Clerk
House of Representatives

as amended

By: Patrick B. Haggerty H.B. No. 1460

Substitute the following for H.B. No. 1460:

By: Quintanilla C.S.H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

(((Insert 1)))

relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended by amending Subdivisions (5), (13), (20), and (23-a) and adding Subdivisions (1-a), (17-a), (18-a), and (25) to read as follows:

(1-a) "Affiliate" means a person who, with respect to a license holder, is under the common control of a third person who has the power to:

(A) directly or indirectly vote 25 percent or more interest in the license holder or an entity under the authority of the license holder;

(B) establish policy for the license holder, directly or through a related person; or

(C) hire, elect, or otherwise designate related persons for the license holder.

(5) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(13) "Lease-purchase" means entering into:

(A) a lease contract for a manufactured home in which the lessor retains title; or

(B) another agreement that contains [~~containing~~] a provision conferring on the lessee an option to purchase a

C49

manufactured home.

(17-a) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(18-a) "Related person" means a person who, directly or indirectly with respect to a license holder:

(A) participates in management, policy decisions, or day-to-day activities subject to this chapter; or

(B) has been found by the department in a final order to be a related person.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(25) "Used manufactured home" means a manufactured home for which a statement of ownership and location has been issued or a manufactured home that has been occupied for any use, except that the term does not include:

(A) a manufactured home used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home;

(ii) was installed but never occupied;

(iii) had a statement of ownership and location issued with respect to the home; and

(iv) was taken back from the consumer because of a first payment default or an agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding a zoning law or any other law, if a manufactured home occupies a specific lot in a municipality, the owner of the manufactured home may move the manufactured home from that lot and place another manufactured home on the lot, provided that the replacement is a newer manufactured home and at least as large in living space as the manufactured home that was initially located on the lot.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National

Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Sections 1201.054(b) and (d), Occupations Code, are amended to read as follows:

(b) If requested by any member of the public, the board shall hold a hearing on any rule that the board proposes to adopt, other than a rule proposed for adoption under emergency rulemaking. The board must provide notice of a hearing under this subsection not later than the 10th day before the date the hearing is scheduled to be held. If a rule is adopted under emergency rulemaking, only the requirements of Chapter 2001, Government Code, apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to an installation standard [~~standards~~] may not take effect later than the 60th day after the date of publication of notice unless:

(1) the board determines that an earlier effective date is required to meet an emergency; and

(2) the installation standard is adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.058, Occupations Code, is amended

to read as follows:

Sec. 1201.058. [~~AMOUNT OF~~] FEES. (a) The board shall establish in reasonable amounts [~~the~~] fees [~~imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary~~] to cover any purpose under [~~the cost of administering~~] this chapter. If the department rules under this chapter provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) A fee imposed by this chapter or a rule under this chapter is:

(1) earned on the date the applicable payment is received by the department; and

(2) not subject to refund.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Sections 1201.101(d), (f), and (g), Occupations Code, are amended to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A

retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person who is not required to hold a license as described by Section 1201.102 [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 7. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ an unlicensed person to assist the installer in performing installation functions if the licensed installer supervises the unlicensed person and maintains a list of all unlicensed persons employed. The director may issue an order to prohibit a person who is not licensed as an installer from

performing installation functions without the supervision of a licensed installer.

(b) A license holder may engage a person who is not licensed under this chapter but holds another license issued by this state to provide goods and services in accordance with that license, including the installation or connection of air conditioning, plumbing, or electrical systems.

(c) A person who [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.~~

[~~(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.~~

[~~(c) In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or a broker's license or who is a related person of that license holder[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 8. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (c-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who is anticipated to be a related person at the time the license is issued;

(2) each [~~the~~] trade name and the name of each business organization [~~name~~] by which the applicant does business under this chapter and[~~, if incorporated, the name registered with the secretary of state and~~] the address of each [~~the~~] business organization; [~~and~~]

(3) the dates on which the applicant became the owner and operator of the business; and

(4) each location to which the license will apply.

(c-1) The applicant shall maintain, at the applicant's principal office or another location designated by the applicant within this state, all records required of the applicant under this chapter.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 9. Section 1201.104, Occupations Code, is amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, or rebuilder's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must,

within the year preceding the date of the application for the person's initial license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must employ at least one related person who meets the requirement described by this subsection.

(b) Each individual who is a related person of the applicant must attend and successfully complete 20 hours of instruction in the law described by Subsection (a). The individual must complete the next course of instruction offered after the date on which the individual becomes a related person. The individual is automatically barred from acting as a related person until the individual successfully completes the course of instruction required by Subsection (a).

(c) An applicant for a salesperson's license must successfully complete the next course of instruction offered after the date the person is licensed. A salesperson who fails to successfully complete the course of instruction described by Subsection (a) will automatically have the person's license suspended until the person successfully completes the course of instruction.

(d) [~~The director may not issue a license to that person until the course of instruction is completed.~~

[~~(b)~~] The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules regarding the content of the course of instruction and the requirements for board approval of

the course of instruction, including a rule requiring the course to be presented live and a rule prohibiting any electronic transmission of the course.

(f) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(g) Successful passage of an [~~(f) An~~] examination must [~~may not~~] be a prerequisite for the successful completion of an initial course of instruction required under this section, but may not be a prerequisite for continuing education courses [~~made a prerequisite of licensing~~].

SECTION 10. Section 1201.105, Occupations Code, is amended to read as follows:

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a

form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amount that is due directly to the retailer under this chapter.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department is unable to obtain timely reimbursements from a surety or the department determines that a surety has experienced a deterioration in its financial condition, the board may direct the director to discontinue the acceptance of bonds issued by that surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each additional branch location of a retailer;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) The director may increase the fee amounts under Subsection (a) with respect to the issuance of an initial, renewal, or subsequent license based on an application described by Section 1201.118.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a license holder or a business entity under which the [~~corporation that is a~~] license holder conducts business; or

(2) location.

(b) A license holder shall notify the department not later than the 10th day before the date of a change described in Subsection (a).

(c) The license holder shall provide to the department [~~director may require~~] a proper endorsement of the original bond to avoid an interruption in the application of the bond to the license.

SECTION 13. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.1125 to read as follows:

Sec. 1201.1125. PROBATIONARY INSTALLER'S OR SALESPERSON'S LICENSE. (a) An applicant for an initial installer's license receives the license only on a probationary basis until the department inspects a sufficient number of installations performed by the installer and fails to find an identified material violation of this chapter or the rules adopted under this chapter. The board,

with the advice of the advisory committee established under Section 1201.251, shall adopt rules to determine the number of successful installations required for termination of the probationary period under this subsection.

(b) The board shall adopt rules under which the director may elect to issue a renewal installer's license or an initial or renewal salesperson's license on a probationary basis.

(c) If the director determines that a salesperson or installer should receive a probationary license under Subsection (b), the director may issue the probationary license on the terms and for the period the director considers reasonable in accordance with the rules adopted under that subsection.

(d) A person who is issued a probationary license under Subsection (b) may appeal by written notice to the director the terms of the license or the period for which the license is issued not later than the 30th day after the date the license is issued. If the license holder appeals under this subsection, the director shall set the matter for a hearing to be conducted by the State Office of Administrative Hearings. The hearing and any related administrative proceedings are considered to be a contested case subject to Chapter 2001, Government Code.

(e) If the license holder does not appeal as permitted by Subsection (d), the probationary license remains in effect for the period and in accordance with the terms specified in the license.

SECTION 14. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. [~~CERTIFICATION AND~~] CONTINUING EDUCATION

PROGRAMS. (a) The department [~~board~~] shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for license holders [~~salespersons regulated~~] under this chapter. A continuing education program must:

(1) be at least six hours in length; and

(2) include the current rules of the department under this chapter and other matters the department considers relevant.

(b) As a prerequisite for license renewal, a license holder must attend a [~~A person who holds a salesperson's license must participate in certification and~~] continuing education course approved or administered by the department under this section [~~programs as provided by Subsection (c)~~].

[~~(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution.~~

[~~(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.~~

[~~(e) A salesperson must complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is issued. To renew a salesperson's license, a salesperson regulated~~

~~under this chapter must complete an additional eight hours of certification and continuing education programs for each renewal. The programs must be presented by a board-approved organization or educational institution and must include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.~~

[~~(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.~~

[~~(g) The board shall suspend the license of a salesperson regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the salesperson's completion of the programs.~~]

SECTION 15. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION. A license issued under this chapter, other than a probationary license, [~~(a) A manufacturer's, retailer's, broker's, or installer's license is valid for one year. A salesperson's license~~] is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

[~~(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder~~

~~pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 16. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. ADDITIONAL PROCEDURES FOR CERTAIN LICENSE APPLICATIONS. The board shall adopt rules providing for the additional review and scrutiny of an initial, renewal, or subsequent license application that involves an applicant or a related person who has previously:

(1) in a final order issued by the department, been found to have:

(A) participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license; or

(B) engaged in activity subject to this chapter without holding the required license;

(2) caused the trust fund to incur unreimbursed payments or claims; or

(3) failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 17. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties,~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 18. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 19. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) Not later than the 15th day after the date a consumer exercises the consumer's right of rescission as provided by Section 1201.1521, the retailer shall refund to the consumer all money and other consideration received from the consumer without offset or deduction if the retailer and the consumer entered into a binding written agreement under which the consumer submitted to the retailer a deposit that was a down payment for the home.

SECTION 20. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE,

OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge. The right of rescission applies only to a transaction between a retailer and a consumer.

(b) Subject to rules adopted by the board, a consumer may modify or waive for a bona fide personal financial emergency the consumer's right to rescind the contract without penalty or charge. The rules adopted by the board shall, to the extent practicable, be modeled on the federal rules for the modification or waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226.

SECTION 21. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the person's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 22. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer unless the seller is a consumer in a transaction as provided by Section 1201.456.

(c) A broker in a transaction under this chapter shall

provide to a person who engages the broker's services a written disclosure of any interest that the broker represents in the transaction.

(d) A broker may assist a person who is offering or otherwise engaging in the sale, exchange, or lease-purchase of a manufactured home only if that person holds a license required by this chapter.

SECTION 23. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) The copies of permits and the lists and information required under this section may be provided electronically.

(e) The department shall pay the reasonable cost of providing the materials required [~~copies or the list and information~~] under Subsection (b) or (c) unless the materials are provided electronically.

SECTION 24. Sections 1201.162(a) and (e), Occupations Code, are amended to read as follows:

(a) Before the completion of a credit application or not

later than one day before entering into an agreement for a sale, exchange, or lease-purchase that will not be financed, the retailer [~~or agent~~] must provide to the consumer a written disclosure in a form prescribed by rules adopted by the board. The disclosure form shall:

(1) be printed in at least 12-point type;

(2) address matters of concern relating to the costs and obligations that may be associated with manufactured home ownership, matters to be considered in making any financing decisions, related costs that may arise in acquiring a manufactured home, and other matters the board considers appropriate to promote informed decision-making by the consumer with respect to the acquisition and ownership of a manufactured home; and

(3) conspicuously disclose the consumer's right of rescission. [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as "HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of~~

~~manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with~~

~~the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~]

(e) Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home

or otherwise impair a title or lien position of a person other than the retailer. The consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) constitutes conclusive proof that the notice was delivered. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission immediately ceases on the date the lien is filed with the department.

SECTION 25. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the contract, the consumer may modify or waive the consumer's right to rescind the contract or the waiting period provided by Subsection (a) if the consumer determines that the acquisition of the manufactured home is needed

for a bona fide personal financial emergency. If the consumer has a bona fide personal financial emergency that requires the immediate acquisition of the manufactured home, the consumer shall give the retailer a dated written statement that describes the personal financial emergency, specifically modifies or waives the waiting period or the right of rescission, as applicable, and bears the signature of each consumer who is entitled to the waiting period or right of rescission. On receipt of the written statement described by this subsection, the retailer shall immediately provide to the consumer all of the disclosures required by this subchapter and engage in the transaction without reference to the required waiting period or the right of rescission.

(c) A form printed for the purpose of Subsection (b) may be used only:

(1) with respect to a manufactured home that is to be located in an area that has been declared by the governor to be a disaster area as provided by Section 418.014, Government Code; and

(2) until the first anniversary of the date the governor declared the area to be a disaster area.

SECTION 26. Section 1201.203, Occupations Code, is amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership and location [~~at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect the holder of a lien [~~a lienholder~~] recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

SECTION 27. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the board [~~director~~] or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the board [~~director~~], each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory lien [~~the manufacturer's certificate~~] automatically converts to a security interest in

proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer shall [~~may~~] submit the manufacturer's certificate for that home to the department. If an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not produce the certificate as required by this subsection, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to that effect to each party currently reflected in the department's records as having a recorded lien on the inventory of that retailer. Failure to include the manufacturer's certificate with an application described by this subsection does not impair a consumer's ability to obtain, on submitting an otherwise complete application, a statement of ownership and location free from a lien other than a lien created by or consented to by the consumer.

SECTION 28. Section 1201.205, Occupations Code, is amended to read as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be issued on a board-approved form and must provide:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and address of the new owner, if the owner's address is different from the address of the home;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address of the real property on [~~the county of this state in~~] which the home has been [~~is~~] installed for occupancy, including the name of the county and, if different from the address of the home, the address of the new owner of the home;

(6) in chronological order of recordation, the date of each lien other than a tax lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens which must state:

"On January 1st of each year, a tax lien is placed on a manufactured home in favor of each taxing unit with taxing authority over the real property on which the home is located. To enforce that lien, the lien must be recorded with the manufactured housing division of the Texas Department of Housing and Community Affairs, as provided by law. You may check that division's records through its Internet website or contact the division to identify any recorded tax liens. To identify the amount of unpaid tax liability, contact the taxing unit for the county in which the home is located on January 1st of that year" [~~the signature of the owner~~

~~in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) [~~the location of the home;~~

[~~(10)~~] a statement of whether the owner has elected to treat the home as real property or personal property;

(10) [~~(11)~~] statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(11) [~~(12)~~] any other information the board [~~director~~] requires.

SECTION 29. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the board-approved form [~~made by affidavit~~].

(i) Notwithstanding Subsection (d), if a mortgage loan made in connection with a transaction under this chapter is to be secured by real property that includes the manufactured home, the mortgage loan is funded, and a deed of trust covering the real property and all improvements on the real property is recorded, but the licensed title company or attorney who closed the loan failed to complete the

conversion of the manufactured home to real property in accordance with this chapter, the holder or servicer of the mortgage loan at any time may apply for a statement of ownership and location, including making an election in the application with respect to real property status, and may obtain from the department a certified copy of the statement of ownership and location if, not later than the 60th day before the date of an application for a statement of ownership and location electing real property status, the record owner of the home, as reflected in the department's records, has been provided written notice by certified mail at:

(1) the physical address of the location of the home and, if the address of the record owner is different from that of the location of the home, the mailing address of the owner; and

(2) any other location known or believed after a reasonable inquiry by the holder or servicer of the loan to be an address at which the owner may receive mail or an address of record.

(j) The board by rule shall require evidence that the mortgage loan holder or servicer applying for a real property election has complied with the requirements of this section.

SECTION 30. Section 1201.206, Occupations Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections (g) through (i) to read as follows:

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed and submitted. The consumer shall return the completed application to the retailer. The

retailer shall surrender to the department the manufacturer's certificate in accordance with Section 1201.204 and the manufacturer's statement of origin at the same time that the retailer submits the application for the first statement of ownership and location.

(c) Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(d) Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) If the seller accepts a used manufactured home as part of the consideration for the sale of another manufactured home, the

seller shall provide to the department a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the used manufactured home from the previous owner of the used manufactured home to the seller at the same time that the seller files the completed application for the issuance of a statement of ownership and location for the manufactured home that was sold by the seller in that transaction. If the seller is a retailer, on the application for the issuance of the new statement of ownership and location for the used manufactured home the seller shall indicate whether that home has been added to the inventory of the retailer.

(h) At the time the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that has not been added to a retailer's inventory, the seller shall file with the department a written statement from the tax assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date of the transaction in which the seller acquired the used manufactured home.

(i) If a person who sells a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within the applicable period, the department may assess an additional fee of not less than $100 against the seller. The department may enforce the collection of the additional fee from the seller through a judicial proceeding. The department shall place on the application for the

statement of ownership and location the following statement in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF AT LEAST ONE HUNDRED DOLLARS ($100). A LATE APPLICATION CANNOT BE PROCESSED UNTIL THE FEE DESCRIBED BY THIS PARAGRAPH IS PAID IN FULL."

SECTION 31. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2061 to read as follows:

Sec. 1201.2061. NOTICE OF INSTALLATION. (a) A notice of installation must be filed with the department on the board's prescribed form. If the installation involves a secondary relocation of the home, the notice must be accompanied by:

(1) a copy of the original notice of installation; or

(2) certification that a copy of the original notice of installation has been provided to the chief appraiser of the county in which the home is installed.

(b) The notice required by Subsection (a) may be delivered by certified mail or by electronic transmission of the document in a commonly readable format.

(c) If the method to report the installation of a relocated home is the method specified by Subsection (a)(2), the department may adopt a discounted fee for filing the notice of installation.

(d) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the department shall, on request, provide a tax assessor-collector with

one copy of any reported notice of installation.

SECTION 32. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2062 to read as follows:

Sec. 1201.2062. DIFFICULTY IN DOCUMENTING CHAIN OF TITLE. Notwithstanding any provision in this chapter, if a person acquires a manufactured home and the owner of record and an intervening owner of a lien on the home cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if that person submits an application for the statement and provides:

(1) a supporting affidavit describing the chain of title and the status of any liens; and

(2) any reasonable supporting proof that the director may require.

SECTION 33. Section 1201.207, Occupations Code, is amended to read as follows:

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) As soon as practicable after June 30 of each year, the department shall, except for applications relating to new

manufactured homes and applications accompanied by tax certificates, discontinue its issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. The department shall post on its Internet website a notice as to the anticipated date on which the department intends to begin issuing statements of ownership and location again and the anticipated date on which the department intends to again comply with the period for processing applications prescribed by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the statement of ownership and location in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the record owner of the home and to each [~~any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, [~~either~~] in writing, [~~or~~] by operation of law, or by the department's procedures provided by Section 1201.2062 to document ownership and lien status. After the department has issued a statement of ownership and location, the department may not alter the record of the ownership or lien status

of a manufactured home for activity that occurred before the issuance of the statement of ownership and location unless the department:

(1) obtains the written permission of the owner of record for the manufactured home or a court order; or

(2) determines that an exception is necessary in accordance with rules adopted by the board.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a retailer in the ordinary course of business, regardless of whether a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without the need to provide any notice and is entitled to ownership of the manufactured home free of all liens and entitled to a statement of ownership and location to that effect on payment by the consumer of the purchase price to the retailer. If an existing lien on the manufactured home is perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

SECTION 34. Section 1201.2075, Occupations Code, is amended to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the

lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 35. Section 1201.2076, Occupations Code, is amended to read as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the [~~The~~] department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) The department may rely on a commitment for title insurance, a title insurance policy, or an attorney's title opinion to determine that a lien on real property has been released as required by Subsection (a).

SECTION 36. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) A license holder who sells, exchanges, or lease-purchases a new manufactured home to a consumer shall pay the required sales and use tax on the home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If a license holder sells, exchanges, or lease-purchases a home without paying the required sales and use tax, the payment shall be made from the trust fund for an amount not more than the maximum amount available in bond or other security required by Section 1201.106 for the person's license. The trust fund may file with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund under this section [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 37. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If an appeal is not timely made, the revocation or suspension described in the notice becomes final.

(d) The department shall prohibit any activity with respect to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 38. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

SECTION 39. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or recordation of liens, including tax liens.

SECTION 40. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property on which the home is located. The notice must include the physical address at which the home is currently located. If the person giving notice knows that the person for whom the notice is intended does not reside and is no longer receiving mail at that address, a reasonable effort shall be made to locate the person for whom the notice is intended and to give the person notice at an address where the person receives mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder may enter the real property on which the home is located to remove

the home. The real property owner must disclose to the owner or lienholder seeking to remove the home the location of the home and must grant that person reasonable access to the home. A person who removes the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns or previously owned an interest in the manufactured home, or that person's affiliate or related person:

(1) owns the real property on which the home is located; or

(2) claims that the home is abandoned.

SECTION 41. Sections 1201.219(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on the required [~~a~~] form [~~provided by the department~~]. The form must require the disclosure of the original dollar amount of the lien as well as the name and address of the person in whose name the manufactured home is listed on the tax

roll. The department on its Internet website shall disclose the date of each lien filing and the original amount of the lien claimed in each filing and shall provide a notice that the amount shown does not include additional amounts such as interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) [~~recordation of a lien with the department~~] is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. The tax assessor-collector for any taxing unit with the power to tax the manufactured home shall file any appropriate tax lien on the home. A single filing by a tax assessor-collector is a filing for each taxing unit for which the tax assessor is empowered to collect.

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien [~~security agreement by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

SECTION 42. Section 1201.220, Occupations Code, is amended to read as follows:

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each

manufactured home reported in the notice of installation to the department as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 43. Section 1201.251, Occupation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In accordance with Subsection (d), the board [~~The director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) To ensure that the standards and requirements adopted under this section are recommended by qualified persons, the board may adopt rules that provide for the approval of foundation systems and devices by licensed engineers. A generic installation standard adopted by rule shall first be reviewed by an advisory committee established by the board. The advisory committee must include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices. The advisory committee shall submit a report to the board providing each comment and concern regarding any proposed rule. The members of the committee are not personally liable for providing the advice to the board.

SECTION 44. Section 1201.253, Occupations Code, is amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

SECTION 45. Section 1201.255, Occupations Code, is amended

to read as follows:

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued under this chapter. An uninstalled manufactured home may not be occupied for any purpose [~~issued by the director~~].

(b) An installer may not install a manufactured home at a location that has evidence of ponding, run-off under heavy rains, or bare uncompacted soil unless:

(1) the installer obtains the owner's signature on a form adopted by 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

(2) the owner accepts that risk in writing.

SECTION 46. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect the [~~a manufacturing~~] facility of a license holder.

SECTION 47. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY STATE AGENCIES AND LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 48. Section 1201.302(a), Occupations Code, is amended to read as follows:

(a) To ensure that a manufactured home sold or installed in

this state complies with the standards code, the director may 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 the board [~~director~~].

SECTION 49. Subchapter G, Chapter 1201, Occupations Code, is amended by adding Section 1201.306 to read as follows:

Sec. 1201.306. ENGINEER APPROVAL OF INSPECTION COMPONENTS. In the inspection of the installation of a manufactured home under this chapter the department may use or permit the use of a device or procedure that has been reviewed and approved by a licensed engineer if the use complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 50. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship, other than cosmetic defects.

(b) The manufacturer's warranty is in effect until at least

the first anniversary of the date of initial installation of the home at the consumer's homesite or the date of closing of the consumer's acquisition of a new home that has already been installed, as applicable.

SECTION 51. Section 1201.352, Occupations Code, is amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON NEW HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship, except as provided by Subsection (a-1).

(a-1) The retailer may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the date of the:

(1) [~~date of~~] initial installation of the home at the consumer's homesite; or

(2) closing of the consumer's acquisition of the home if the home has already been installed.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the date of installation of the home, the retailer shall deliver to the consumer a copy of the warranty given to the retailer by the licensed installer.

SECTION 52. Section 1201.353, Occupations Code, is amended to read as follows:

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is considered to be notice to the manufacturer, [~~or~~] retailer, or installer beginning on the third business day after the date the department forwards to the applicable license holder the notice by regular mail or by electronic mail as a scanned copy of the notice.

SECTION 53. Section 1201.354, Occupations Code, is amended to read as follows:

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 54. Section 1201.355, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(d) Notwithstanding any other provision of this section, the department may perform a home inspection at any time if the department determines that there is a reasonable possibility that a

condition of the manufactured home may present an imminent threat to public health or safety. The department shall obtain an inspection search warrant if required by other law.

SECTION 55. Section 1201.356, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (f), (g), and (h) to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer's, or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer, or retailer an appropriate order for corrective action by the manufacturer, installer, or retailer, specifying a reasonable period for completion of the corrective action.

(f) The installer and retailer are responsible for the warranty of installation on new HUD-code manufactured homes. If the department determines that a complaint is covered by the installation warranty, the director shall issue to the installer an order requiring corrective action. If the installer fails to perform the corrective action, the installer is subject to the provisions of Section 1201.357 and the director shall issue the same order for corrective action to the retailer with an additional

period, not to exceed 10 days, allowed for performing the corrective action, unless additional time for compliance is needed, as established by a showing of good cause by the retailer.

(g) If the retailer is required to perform the corrective action under Subsection (f) because of the installer's failure to comply with the director's order, the retailer may seek reimbursement from the installer.

(h) Notwithstanding Subsection (f), the period for performing the required warranty work may be shortened by the director as much as reasonably possible if the warranty work may be necessary to address an imminent threat to public health or safety.

SECTION 56. Section 1201.357, Occupations Code, is amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within the period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked. The consumer may express the

consumer's views at the informal meeting. Following the meeting, the director shall:

(1) resolve the matter by agreed order;

(2) dismiss the matter if no violation is found to have occurred; or

(3) institute an administrative action that may include suspension, revocation, assessment of administrative penalties, or any combination of those actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for

failure to provide warranty service.

SECTION 57. Section 1201.358, Occupations Code, is amended to read as follows:

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR [~~HEARING RESULTS~~]. (a) Failure by the manufacturer, [~~or~~] retailer, or installer, as applicable, to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If~~] the director determines that the order issued under Section 1201.357 was incorrect regarding the warranty [~~that~~] obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the

obligation the right of indemnification against the other.

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 58. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For each installation [~~all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give [~~the manufactured home owner~~] a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The retailer who is responsible for the installation of a new HUD-code manufactured home shall give the manufactured home owner the warranty for the installation. If the retailer subcontracts the installation to a licensed installer, the retailer and installer are jointly and severally liable for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer has no obligation or liability under a warranty for a new manufactured home for any defect described in a written notice received from the consumer more than one year [~~two years~~] after the date of acquisition of a home that has already been installed, as

applicable, or the date of the installation.

SECTION 59. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. ADDITIONAL CORRECTIVE ACTION AUTHORITY. Notwithstanding the limitations and terms of a warranty, if during any inspection the department identifies an aspect of an installation that does not conform to the applicable requirements, the director may:

(1) order the license holder who performed the installation to correct the defect; or

(2) if that license holder is no longer licensed, issue an order directing another licensed installer to correct the installation and reimburse the installer from the trust fund for the costs of that corrective action.

SECTION 60. Section 1201.401, Occupations Code, is amended to read as follows:

Sec. 1201.401. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND. The manufactured homeowners' recovery trust fund is a dedicated [~~an account in the general revenue~~] fund held in trust for carrying out the specific purposes of the fund. Money deposited in the fund as required by this chapter is exempt from the application of Section 403.095, Government Code.

SECTION 61. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 62. Section 1201.404(b), Occupations Code, is

amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose valid claim is the earliest by date and time.

SECTION 6~~8~~2. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable and the director may not pay attorney's fees or actual damages:

(1) to reimburse an affiliate or related person of a license holder, unless the director issues an order under Section 1201.358(c);

(2) to correct a defect that is solely cosmetic in nature; or

(3) to address matters not provided for in this subchapter, unless those matters involve:

(A) a breach of warranty;

(B) a failure to return or apply in accordance with a written agreement money received from a consumer or to which the consumer was entitled; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home, including an agreement for goods or services involving steps, air conditioning, access to utilities, or sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including payments made under Section 1201.358, and may require consumers making claims that may be subject to reimbursement from the trust fund to provide reasonable estimates establishing those costs. The rules adopted by the board may specify procedures and requirements the board considers necessary and advisable for the administration of the trust fund.

SECTION 64. Section 1201.406, Occupations Code, is amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond related to the license; [~~and~~]

(2) investigate the claim;

(3) issue a preliminary determination on the claim; and

(4) give the consumer, the license holder, and any surety related to the license:

(A) an opportunity to resolve the matter by agreement; or

(B) the opportunity to dispute the preliminary determination.

(c) If the matter is not resolved as provided by Subsection (b)(4) before the 30th day after the date the preliminary determination is issued, the preliminary determination automatically becomes final and the director shall make demand on the surety or deduct any payable amount of the claim from the license holder's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

SECTION 6~~5~~4. Section 1201.407, Occupations Code, is amended to read as follows:

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that had been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes in the determination the director considers to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer,

broker, and installer.

(c) Before making a final determination, the department shall provide a license holder a period of 10 days [~~an opportunity~~] to comment on the preliminary determination.

(d) After considering the comments made in relation to the preliminary determination, if any, the director shall issue a final determination.

(e) Not later than the 10th day after the date of its issuance, the final determination may be appealed to the board by giving written notice to the director, who shall submit the matter to the board for consideration at the next meeting for which the matter can be publicly posted in the manner as required by Chapter 551, Government Code.

(f) Any license [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license~~] holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION ~~66~~ 5. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 6~~7~~. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. CONSUMER INFORMATION [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund. The director shall make the information available to consumers:

(1) on the department's Internet website; and

(2) in hard-copy format to any member of the public who submits a request for the information.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 7~~68~~. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly

executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location. If the seller or transferor fails to forward to the purchaser or transferee the necessary, executed documents as required by this subsection, the purchaser or transferee may apply directly for the issuance of a statement of ownership and location.

((Insert 2))

SECTION 69. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) A person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow another [~~any~~] person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the statement of ownership and location.

SECTION 70. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or

another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, a tax appraiser or a [~~the~~] tax assessor-collector [~~collector~~] may:

(1) apply to the department for a seal;

(2) pay the applicable fee; and

(3) recover that fee as part of the cost of the sale of the home.

(b-1) The tax appraiser or the tax assessor-collector assumes full responsibility for affixing to the home a seal issued to the tax appraiser or the tax assessor-collector under Subsection (b).

(c) A [~~The~~] seal issued to the tax appraiser or the tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 71. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A political subdivision of this state that identifies a manufactured home within its jurisdiction as a salvaged manufactured home may impose with respect to that home an inspection, a requirement for corrective action, or other requirements that would apply if the home were not a salvaged

manufactured home.

(h) A license holder may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvaged and that has not been repaired as required by this chapter and the rules adopted under this chapter. The sale, exchange, lease-purchase, or installation of a salvaged manufactured home for use as a dwelling constitutes an imminent threat to public health or safety. A license holder that participates in a sale, exchange, lease-purchase, or installation in violation of this section:

(1) is subject to the imposition of penalties and other sanctions provided for in this chapter; and

(2) commits an offense punishable as a Class B misdemeanor.

SECTION 72. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and delivering that written approval to the department.

SECTION 73. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4,

Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 74. Section 1201.509, Occupations Code, is amended to read as follows:

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer[~~, salesperson, or agent of the retailer~~] may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

SECTION 75. Subchapter K, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF CERTAIN USED MANUFACTURED HOMES; OCCUPANCY OF HOMES PRIOR TO CLOSING. (a) A retailer may not sell or otherwise transfer a used manufactured home acquired in exchange for another manufactured home before completing the transaction involving the other manufactured home.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 76. Section 1201.551, Occupations Code, is amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY

ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) repeatedly failed to file with the department completed applications [~~timely provide to a consumer an application~~] for statements [~~a statement~~] of ownership and location in the time and manner required by this chapter [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the

director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had any other license issued by this state revoked or suspended by this state or a political subdivision or agency of this state.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which a demand for reimbursement is made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

SECTION 77. Section 1201.552, Occupations Code, is amended to read as follows:

Sec. 1201.552. HEARING CONCERNING LICENSE. The director may issue an order to revoke, suspend, or deny a new or renewal license. If not later than the 30th day after the date the order is issued the person against whom that order is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the order becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

SECTION 78. Section 1201.553, Occupations Code, is amended to read as follows:

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of an order, decision, or determination of the board or director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 79. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter or the rules adopted under this chapter, or a final order adopted or issued as provided by this chapter, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a license holder [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty

assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) If not later than the 30th day after the date the person receives notice of an administrative penalty the person against whom the penalty is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the administrative penalty becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case.

SECTION 80. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. An order issued by the director under this chapter automatically becomes a final order if the order is not appealed before the 30th day after the date the order is issued. If the person to whom the order is issued files a written request for a hearing with the director, the order is considered to have been appealed and is a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing

before the State Office of Administrative Hearings. The board shall issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSE HOLDER RECORDS. (a) The department may inspect a license holder's records during normal business hours without advance notice if the director determines that an inspection is necessary to:

(1) prevent a violation of this chapter;

(2) protect a consumer or another license holder; or

(3) assist another state or federal agency in an investigation.

(b) The director may request or issue a subpoena for the license holder's records.

(c) If the director determines that it is appropriate to detect and address suspected violations of this chapter, the department may carry out an undercover investigation in accordance with board-adopted rules.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. CRIMINAL PENALTY FOR PERFORMING ACTION WITHOUT PROPER LICENSE. (a) A person who is not required to hold a license under this chapter commits an offense if the person performs an act that requires a license under this chapter.

(b) An offense under this section is a Class B misdemeanor. A subsequent conviction for an offense under this section is

punishable as a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the director has reasonable cause to believe that a person licensed under this chapter has or intends to violate a provision of this chapter or the rules adopted under this chapter, to enforce compliance with this chapter the director may issue to the license holder without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both.

(b) The director may issue an order to a license holder to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to the violation if the license holder in any way is performing an action that relates to the sale, financing, or installation of a manufactured home or relates to providing goods or services in connection with the sale, financing, or installation of a manufactured home, provided that if the matter involves a law that is subject to administration or interpretation by a state agency other than the department, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing the order. The director may not issue an order under this subsection with respect to a matter that is subject to inspection and regulation by a state agency other than the department.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is issued requests a hearing, the director shall set and give notice of a hearing. The hearing is governed by Chapter 2001, Government Code. Based on the

findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 30th day after the date on which an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided under law, the director, after the expiration of the 10-day period following the date the director provides notice to the person, may, without a prior hearing, suspend the person's license. The suspension continues until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension:

(1) the person whose license has been suspended may not perform an act that requires a license under this chapter; and

(2) all compensation received by the person during the period of suspension is subject to forfeiture to the person from

whom the compensation was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) must be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided notice of the time and place of the hearing not later than the third day before the hearing is scheduled to occur.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may prohibit the person from being a related person of a license holder unless the person obtains the prior written consent of the director.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions.

(b) If the person charged with a violation accepts the director's determination with respect to an administrative penalty, the director shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(c) Not later than the 30th day after the date on which the director's determination becomes final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the facts of the violation, the amount of the penalty, or both the facts of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the director's order assessing the penalty is subject to the substantial evidence rule.

(g) If, after judicial review, the penalty is reduced or not assessed, the director as applicable shall remit to the person charged the appropriate amount, including accrued interest if the penalty has been paid, or shall execute a release of any supersedeas bond that was posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be

deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the division director, may institute an action for injunctive relief to restrain the person from continuing the violation and for a civil penalty of not more than $1,000 for each violation and of not more than $250,000 in the aggregate. A civil action filed under this subsection must be filed in a district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 81. Section 2306.0724, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A housing sponsor who fails to file a report in a timely manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Subsection (e) [~~Section 2306.6023~~].

(e) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 82. Section 2306.186, Government Code, is amended by amending Subsection (k) and adding Subsection (m) to read as follows:

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Subsection (m) [~~Section 2306.6023~~]. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(m) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 83. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its Internet website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and provide a hard copy of that information to those persons on request by those persons.

SECTION 84. Subchapter AA, Chapter 2306, Government Code, is amended by adding Section 2306.6024 to read as follows:

Sec. 2306.6024. PARTICIPATION IN DEPARTMENT PROGRAMS. The division may meet the requirements of Sections 2306.6017 through 2306.6019 by participating in the department programs related to those requirements.

SECTION 85. Section 11.432, Tax Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by:

(1) a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) [~~or be accompanied by~~] a verified copy of the

purchase contract showing that the applicant is the purchaser of the manufactured home;

(3) a photostatic copy of the current title page for the manufactured home as that page is displayed on the Internet website of the Texas Department of Housing and Community Affairs; or

(4) the applicable computer records of the Texas Department of Housing and Community Affairs.

(b-1) The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether:

(1) an owner has elected to treat the manufactured home as real property or personal property; or

(2) the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 86. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home, the collector shall enter into a contract under this section with a property owner who:

(1) owns the manufactured home; and

(2) requests the establishment of the escrow account.

SECTION 87. Section 32.03, Tax Code, is amended by amending Subsections (a-1), (a-2), and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than the expiration of the six-month period following the end of the calendar year for which the tax was owed. The tax lien may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against the owner of a new manufactured home who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005, or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer title of a manufactured home until all tax liens perfected on the home have been filed in a timely manner with the Texas Department of Housing and Community Affairs and until all personal property taxes on the manufactured home that accrued on each January 1 within 18 months of the date of the sale are extinguished or satisfied and released. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community

Affairs. In this section, "manufactured home" has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed in a timely manner with the Texas Department of Housing and Community Affairs, a taxing unit or an agent of the taxing unit may not use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax lien.

(b-1) A taxpayer is entitled to designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(b-2) Notwithstanding any other provision of law, if a manufactured home was omitted from the tax roll at any time before the second anniversary of the date on which taxes are due, the taxing unit may file a tax lien not later than the 150th day after the date on which the tax becomes delinquent.

(b-3) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. To enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the

taxes are levied, the tax collector shall apply the escrowed amounts to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may increase once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 88. The following provisions are repealed:

(1) Section 1201.054(c), Occupations Code;

(2) Section 1201.059, Occupations Code;

(3) Section 1201.112, Occupations Code;

(4) Section 1201.163, Occupations Code;

(5) Sections 1201.214(c) and (d), Occupations Code;

(6) Section 1201.408, Occupations Code; and

(7) Section 2306.6023, Government Code.

SECTION 89. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 90. This Act takes effect September 1, 2007.

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB1460-Second Reading

AMENDMENT#	AUTHOR	DESCRIPTION	ACTION
✓1	Haggerty	Amendment	Adopted
✓2	Haggerty	Amendment	Adopted
✓3	Haggerty	Amendment	Adopted

ADOPTED

APR 25 2007 CKT

Robert Haney ct
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 1 BY: Hughes

Amend HB 1460 by adding the appropriately numbered section as follows:

Insert 2

SECTION 68. Amend Section 1201.453, as follows:

Sec. 1201.453. HABITABILITY. Occupations Code, is amended to read

Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

FLOOR AMENDMENT NO. 2 BY: Haggerty

Amend CSHB 1460, on page 54, between lines 17 and 22 to read as follows:

Sec. 1201.401. MANUFACTURED HOMEOWNERS' RECOVERY TRUST FUND. The manufactured homeowners's trust fund is a ~~dedicated~~ an account in the general revenue fund ~~held in trust for carrying out the specific purposes of the fund~~. ~~Money deposited in the fund as required by this chapter is exempt from the application of Section 403.095, Government Code.~~

(omitted restores current law)

ADOPTED

APR 25 2007

Robert Haney
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 3 BY: Haggard

Amend CSHB 1460 on page 75, lines 9-14, by deleting Section 84 and renumbering subsequent sections accordingly.

ADOPTED
APR 25 2007 CKT
Robert Haney
Chief Clerk
House of Representatives

SECOND READING
ENGROSSMENT

By: Haggerty H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended by amending Subdivisions (5), (13), (20), and (23-a) and adding Subdivisions (1-a), (17-a), (18-a), and (25) to read as follows:

(1-a) "Affiliate" means a person who, with respect to a license holder, is under the common control of a third person who has the power to:

(A) directly or indirectly vote 25 percent or more interest in the license holder or an entity under the authority of the license holder;

(B) establish policy for the license holder, directly or through a related person; or

(C) hire, elect, or otherwise designate related persons for the license holder.

(5) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(13) "Lease-purchase" means entering into:

(A) a lease contract for a manufactured home in which the lessor retains title; or

(B) another agreement that contains [~~containing~~] a provision conferring on the lessee an option to purchase a

manufactured home.

(17-a) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(18-a) "Related person" means a person who, directly or indirectly with respect to a license holder:

(A) participates in management, policy decisions, or day-to-day activities subject to this chapter; or

(B) has been found by the department in a final order to be a related person.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(25) "Used manufactured home" means a manufactured home for which a statement of ownership and location has been issued or a manufactured home that has been occupied for any use, except that the term does not include:

(A) a manufactured home used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home;

(ii) was installed but never occupied;

(iii) had a statement of ownership and location issued with respect to the home; and

(iv) was taken back from the consumer because of a first payment default or an agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding a zoning law or any other law, if a manufactured home occupies a specific lot in a municipality, the owner of the manufactured home may move the manufactured home from that lot and place another manufactured home on the lot, provided that the replacement is a newer manufactured home and at least as large in living space as the manufactured home that was initially located on the lot.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National

Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Sections 1201.054(b) and (d), Occupations Code, are amended to read as follows:

(b) If requested by any member of the public, the board shall hold a hearing on any rule that the board proposes to adopt, other than a rule proposed for adoption under emergency rulemaking. The board must provide notice of a hearing under this subsection not later than the 10th day before the date the hearing is scheduled to be held. If a rule is adopted under emergency rulemaking, only the requirements of Chapter 2001, Government Code, apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to an installation standard [~~standards~~] may not take effect later than the 60th day after the date of publication of notice unless:

(1) the board determines that an earlier effective date is required to meet an emergency; and

(2) the installation standard is adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.058, Occupations Code, is amended

to read as follows:

Sec. 1201.058. [~~AMOUNT OF~~] FEES. (a) The board shall establish in reasonable amounts [~~the~~] fees [~~imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary~~] to cover any purpose under [~~the cost of administering~~] this chapter. If the department rules under this chapter provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) A fee imposed by this chapter or a rule under this chapter is:

(1) earned on the date the applicable payment is received by the department; and

(2) not subject to refund.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Sections 1201.101(d), (f), and (g), Occupations Code, are amended to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A

retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person who is not required to hold a license as described by Section 1201.102 [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 7. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ an unlicensed person to assist the installer in performing installation functions if the licensed installer supervises the unlicensed person and maintains a list of all unlicensed persons employed. The director may issue an order to prohibit a person who is not licensed as an installer from

performing installation functions without the supervision of a licensed installer.

(b) A license holder may engage a person who is not licensed under this chapter but holds another license issued by this state to provide goods and services in accordance with that license, including the installation or connection of air conditioning, plumbing, or electrical systems.

(c) A person who [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.~~

[~~(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.~~

[~~(c) In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or a broker's license or who is a related person of that license holder[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 8. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (c-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who is anticipated to be a related person at the time the license is issued;

(2) each [~~the~~] trade name and the name of each business organization [~~name~~] by which the applicant does business under this chapter and[~~, if incorporated, the name registered with the secretary of state and~~] the address of each [~~the~~] business organization; [~~and~~]

(3) the dates on which the applicant became the owner and operator of the business; and

(4) each location to which the license will apply.

(c-1) The applicant shall maintain, at the applicant's principal office or another location designated by the applicant within this state, all records required of the applicant under this chapter.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 9. Section 1201.104, Occupations Code, is amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, or rebuilder's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must,

within the year preceding the date of the application for the person's initial license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must employ at least one related person who meets the requirement described by this subsection.

(b) Each individual who is a related person of the applicant must attend and successfully complete 20 hours of instruction in the law described by Subsection (a). The individual must complete the next course of instruction offered after the date on which the individual becomes a related person. The individual is automatically barred from acting as a related person until the individual successfully completes the course of instruction required by Subsection (a).

(c) An applicant for a salesperson's license must successfully complete the next course of instruction offered after the date the person is licensed. A salesperson who fails to successfully complete the course of instruction described by Subsection (a) will automatically have the person's license suspended until the person successfully completes the course of instruction.

(d) [~~The director may not issue a license to that person until the course of instruction is completed.~~

[~~(b)~~] The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules regarding the content of the course of instruction and the requirements for board approval of

the course of instruction, including a rule requiring the course to be presented live and a rule prohibiting any electronic transmission of the course.

(f) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(g) Successful passage of an [~~(f) An~~] examination must [~~may not~~] be a prerequisite for the successful completion of an initial course of instruction required under this section, but may not be a prerequisite for continuing education courses [~~made a prerequisite of licensing~~].

SECTION 10. Section 1201.105, Occupations Code, is amended to read as follows:

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a

form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amount that is due directly to the retailer under this chapter.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department is unable to obtain timely reimbursements from a surety or the department determines that a surety has experienced a deterioration in its financial condition, the board may direct the director to discontinue the acceptance of bonds issued by that surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each additional branch location of a retailer;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) The director may increase the fee amounts under Subsection (a) with respect to the issuance of an initial, renewal, or subsequent license based on an application described by Section 1201.118.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a license holder or a business entity under which the [~~corporation that is a~~] license holder conducts business; or

(2) location.

(b) A license holder shall notify the department not later than the 10th day before the date of a change described in Subsection (a).

(c) The license holder shall provide to the department [~~director may require~~] a proper endorsement of the original bond to avoid an interruption in the application of the bond to the license.

SECTION 13. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.1125 to read as follows:

Sec. 1201.1125. PROBATIONARY INSTALLER'S OR SALESPERSON'S LICENSE. (a) An applicant for an initial installer's license receives the license only on a probationary basis until the department inspects a sufficient number of installations performed by the installer and fails to find an identified material violation of this chapter or the rules adopted under this chapter. The board,

with the advice of the advisory committee established under Section 1201.251, shall adopt rules to determine the number of successful installations required for termination of the probationary period under this subsection.

(b) The board shall adopt rules under which the director may elect to issue a renewal installer's license or an initial or renewal salesperson's license on a probationary basis.

(c) If the director determines that a salesperson or installer should receive a probationary license under Subsection (b), the director may issue the probationary license on the terms and for the period the director considers reasonable in accordance with the rules adopted under that subsection.

(d) A person who is issued a probationary license under Subsection (b) may appeal by written notice to the director the terms of the license or the period for which the license is issued not later than the 30th day after the date the license is issued. If the license holder appeals under this subsection, the director shall set the matter for a hearing to be conducted by the State Office of Administrative Hearings. The hearing and any related administrative proceedings are considered to be a contested case subject to Chapter 2001, Government Code.

(e) If the license holder does not appeal as permitted by Subsection (d), the probationary license remains in effect for the period and in accordance with the terms specified in the license.

SECTION 14. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. [~~CERTIFICATION AND~~] CONTINUING EDUCATION

PROGRAMS. (a) The department [~~board~~] shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for license holders [~~salespersons regulated~~] under this chapter. A continuing education program must:

(1) be at least six hours in length; and

(2) include the current rules of the department under this chapter and other matters the department considers relevant.

(b) As a prerequisite for license renewal, a license holder must attend a [~~A person who holds a salesperson's license must participate in certification and~~] continuing education course approved or administered by the department under this section [~~programs as provided by Subsection (c)~~].

[~~(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution.~~

[~~(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.~~

[~~(e) A salesperson must complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is issued. To renew a salesperson's license, a salesperson regulated~~

~~under this chapter must complete an additional eight hours of certification and continuing education programs for each renewal. The programs must be presented by a board-approved organization or educational institution and must include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.~~

[~~(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.~~

[~~(g) The board shall suspend the license of a salesperson regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the salesperson's completion of the programs.~~]

SECTION 15. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION. A license issued under this chapter, other than a probationary license, [~~(a) A manufacturer's, retailer's, broker's, or installer's license is valid for one year. A salesperson's license~~] is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

[~~(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder~~

~~pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 16. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. ADDITIONAL PROCEDURES FOR CERTAIN LICENSE APPLICATIONS. The board shall adopt rules providing for the additional review and scrutiny of an initial, renewal, or subsequent license application that involves an applicant or a related person who has previously:

(1) in a final order issued by the department, been found to have:

(A) participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license; or

(B) engaged in activity subject to this chapter without holding the required license;

(2) caused the trust fund to incur unreimbursed payments or claims; or

(3) failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 17. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 18. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 19. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) Not later than the 15th day after the date a consumer exercises the consumer's right of rescission as provided by Section 1201.1521, the retailer shall refund to the consumer all money and other consideration received from the consumer without offset or deduction if the retailer and the consumer entered into a binding written agreement under which the consumer submitted to the retailer a deposit that was a down payment for the home.

SECTION 20. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE,

OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge. The right of rescission applies only to a transaction between a retailer and a consumer.

(b) Subject to rules adopted by the board, a consumer may modify or waive for a bona fide personal financial emergency the consumer's right to rescind the contract without penalty or charge. The rules adopted by the board shall, to the extent practicable, be modeled on the federal rules for the modification or waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226.

SECTION 21. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the person's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 22. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer unless the seller is a consumer in a transaction as provided by Section 1201.456.

(c) A broker in a transaction under this chapter shall

provide to a person who engages the broker's services a written disclosure of any interest that the broker represents in the transaction.

(d) A broker may assist a person who is offering or otherwise engaging in the sale, exchange, or lease-purchase of a manufactured home only if that person holds a license required by this chapter.

SECTION 23. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) The copies of permits and the lists and information required under this section may be provided electronically.

(e) The department shall pay the reasonable cost of providing the materials required [~~copies or the list and information~~] under Subsection (b) or (c) unless the materials are provided electronically.

SECTION 24. Sections 1201.162(a) and (e), Occupations Code, are amended to read as follows:

(a) Before the completion of a credit application or not

later than one day before entering into an agreement for a sale, exchange, or lease-purchase that will not be financed, the retailer [~~or agent~~] must provide to the consumer a written disclosure in a form prescribed by rules adopted by the board. The disclosure form shall:

(1) be printed in at least 12-point type;

(2) address matters of concern relating to the costs and obligations that may be associated with manufactured home ownership, matters to be considered in making any financing decisions, related costs that may arise in acquiring a manufactured home, and other matters the board considers appropriate to promote informed decision-making by the consumer with respect to the acquisition and ownership of a manufactured home; and

(3) conspicuously disclose the consumer's right of rescission. [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of~~

~~manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with~~

~~the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~]

(e) Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home

or otherwise impair a title or lien position of a person other than the retailer. The consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) constitutes conclusive proof that the notice was delivered. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission immediately ceases on the date the lien is filed with the department.

SECTION 25. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the contract, the consumer may modify or waive the consumer's right to rescind the contract or the waiting period provided by Subsection (a) if the consumer determines that the acquisition of the manufactured home is needed

for a bona fide personal financial emergency. If the consumer has a bona fide personal financial emergency that requires the immediate acquisition of the manufactured home, the consumer shall give the retailer a dated written statement that describes the personal financial emergency, specifically modifies or waives the waiting period or the right of rescission, as applicable, and bears the signature of each consumer who is entitled to the waiting period or right of rescission. On receipt of the written statement described by this subsection, the retailer shall immediately provide to the consumer all of the disclosures required by this subchapter and engage in the transaction without reference to the required waiting period or the right of rescission.

(c) A form printed for the purpose of Subsection (b) may be used only:

(1) with respect to a manufactured home that is to be located in an area that has been declared by the governor to be a disaster area as provided by Section 418.014, Government Code; and

(2) until the first anniversary of the date the governor declared the area to be a disaster area.

SECTION 26. Section 1201.203, Occupations Code, is amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership and location [~~at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect the holder of a lien [~~a lienholder~~] recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

SECTION 27. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the board [~~director~~] or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the board [~~director~~], each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory lien [~~the manufacturer's certificate~~] automatically converts to a security interest in

proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer shall [~~may~~] submit the manufacturer's certificate for that home to the department. If an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not produce the certificate as required by this subsection, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to that effect to each party currently reflected in the department's records as having a recorded lien on the inventory of that retailer. Failure to include the manufacturer's certificate with an application described by this subsection does not impair a consumer's ability to obtain, on submitting an otherwise complete application, a statement of ownership and location free from a lien other than a lien created by or consented to by the consumer.

SECTION 28. Section 1201.205, Occupations Code, is amended to read as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be issued on a board-approved form and must provide:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and address of the new owner, if the owner's address is different from the address of the home;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address of the real property on [~~the county of this state in~~] which the home has been [~~is~~] installed for occupancy, including the name of the county and, if different from the address of the home, the address of the new owner of the home;

(6) in chronological order of recordation, the date of each lien other than a tax lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens which must state:

"On January 1st of each year, a tax lien is placed on a manufactured home in favor of each taxing unit with taxing authority over the real property on which the home is located. To enforce that lien, the lien must be recorded with the manufactured housing division of the Texas Department of Housing and Community Affairs, as provided by law. You may check that division's records through its Internet website or contact the division to identify any recorded tax liens. To identify the amount of unpaid tax liability, contact the taxing unit for the county in which the home is located on January 1st of that year" [~~the signature of the owner~~

~~in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) [~~the location of the home;~~

[~~(10)~~] a statement of whether the owner has elected to treat the home as real property or personal property;

(10) [~~(11)~~] statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(11) [~~(12)~~] any other information the board [~~director~~] requires.

SECTION 29. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the board-approved form [~~made by affidavit~~].

(i) Notwithstanding Subsection (d), if a mortgage loan made in connection with a transaction under this chapter is to be secured by real property that includes the manufactured home, the mortgage loan is funded, and a deed of trust covering the real property and all improvements on the real property is recorded, but the licensed title company or attorney who closed the loan failed to complete the

conversion of the manufactured home to real property in accordance with this chapter, the holder or servicer of the mortgage loan at any time may apply for a statement of ownership and location, including making an election in the application with respect to real property status, and may obtain from the department a certified copy of the statement of ownership and location if, not later than the 60th day before the date of an application for a statement of ownership and location electing real property status, the record owner of the home, as reflected in the department's records, has been provided written notice by certified mail at:

(1) the physical address of the location of the home and, if the address of the record owner is different from that of the location of the home, the mailing address of the owner; and

(2) any other location known or believed after a reasonable inquiry by the holder or servicer of the loan to be an address at which the owner may receive mail or an address of record.

(j) The board by rule shall require evidence that the mortgage loan holder or servicer applying for a real property election has complied with the requirements of this section.

SECTION 30. Section 1201.206, Occupations Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections (g) through (i) to read as follows:

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed and submitted. The consumer shall return the completed application to the retailer. The

retailer shall surrender to the department the manufacturer's certificate in accordance with Section 1201.204 and the manufacturer's statement of origin at the same time that the retailer submits the application for the first statement of ownership and location.

(c) Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(d) Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) If the seller accepts a used manufactured home as part of the consideration for the sale of another manufactured home, the

seller shall provide to the department a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the used manufactured home from the previous owner of the used manufactured home to the seller at the same time that the seller files the completed application for the issuance of a statement of ownership and location for the manufactured home that was sold by the seller in that transaction. If the seller is a retailer, on the application for the issuance of the new statement of ownership and location for the used manufactured home the seller shall indicate whether that home has been added to the inventory of the retailer.

(h) At the time the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that has not been added to a retailer's inventory, the seller shall file with the department a written statement from the tax assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date of the transaction in which the seller acquired the used manufactured home.

(i) If a person who sells a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within the applicable period, the department may assess an additional fee of not less than $100 against the seller. The department may enforce the collection of the additional fee from the seller through a judicial proceeding. The department shall place on the application for the

statement of ownership and location the following statement in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF AT LEAST ONE HUNDRED DOLLARS ($100). A LATE APPLICATION CANNOT BE PROCESSED UNTIL THE FEE DESCRIBED BY THIS PARAGRAPH IS PAID IN FULL."

SECTION 31. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2061 to read as follows:

Sec. 1201.2061. NOTICE OF INSTALLATION. (a) A notice of installation must be filed with the department on the board's prescribed form. If the installation involves a secondary relocation of the home, the notice must be accompanied by:

(1) a copy of the original notice of installation; or

(2) certification that a copy of the original notice of installation has been provided to the chief appraiser of the county in which the home is installed.

(b) The notice required by Subsection (a) may be delivered by certified mail or by electronic transmission of the document in a commonly readable format.

(c) If the method to report the installation of a relocated home is the method specified by Subsection (a)(2), the department may adopt a discounted fee for filing the notice of installation.

(d) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the department shall, on request, provide a tax assessor-collector with

one copy of any reported notice of installation.

SECTION 32. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2062 to read as follows:

Sec. 1201.2062. DIFFICULTY IN DOCUMENTING CHAIN OF TITLE. Notwithstanding any provision in this chapter, if a person acquires a manufactured home and the owner of record and an intervening owner of a lien on the home cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if that person submits an application for the statement and provides:

(1) a supporting affidavit describing the chain of title and the status of any liens; and

(2) any reasonable supporting proof that the director may require.

SECTION 33. Section 1201.207, Occupations Code, is amended to read as follows:

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) As soon as practicable after June 30 of each year, the department shall, except for applications relating to new

manufactured homes and applications accompanied by tax certificates, discontinue its issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. The department shall post on its Internet website a notice as to the anticipated date on which the department intends to begin issuing statements of ownership and location again and the anticipated date on which the department intends to again comply with the period for processing applications prescribed by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the statement of ownership and location in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the record owner of the home and to each [~~any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, [~~either~~] in writing, [~~or~~] by operation of law, or by the department's procedures provided by Section 1201.2062 to document ownership and lien status. After the department has issued a statement of ownership and location, the department may not alter the record of the ownership or lien status

of a manufactured home for activity that occurred before the issuance of the statement of ownership and location unless the department:

(1) obtains the written permission of the owner of record for the manufactured home or a court order; or

(2) determines that an exception is necessary in accordance with rules adopted by the board.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a retailer in the ordinary course of business, regardless of whether a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without the need to provide any notice and is entitled to ownership of the manufactured home free of all liens and entitled to a statement of ownership and location to that effect on payment by the consumer of the purchase price to the retailer. If an existing lien on the manufactured home is perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

SECTION 34. Section 1201.2075, Occupations Code, is amended to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the

lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 35. Section 1201.2076, Occupations Code, is amended to read as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the [~~The~~] department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) The department may rely on a commitment for title insurance, a title insurance policy, or an attorney's title opinion to determine that a lien on real property has been released as required by Subsection (a).

SECTION 36. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) A license holder who sells, exchanges, or lease-purchases a new manufactured home to a consumer shall pay the required sales and use tax on the home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If a license holder sells, exchanges, or lease-purchases a home without paying the required sales and use tax, the payment shall be made from the trust fund for an amount not more than the maximum amount available in bond or other security required by Section 1201.106 for the person's license. The trust fund may file with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund under this section [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 37. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If an appeal is not timely made, the revocation or suspension described in the notice becomes final.

(d) The department shall prohibit any activity with respect to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 38. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

SECTION 39. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or recordation of liens, including tax liens.

SECTION 40. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property on which the home is located. The notice must include the physical address at which the home is currently located. If the person giving notice knows that the person for whom the notice is intended does not reside and is no longer receiving mail at that address, a reasonable effort shall be made to locate the person for whom the notice is intended and to give the person notice at an address where the person receives mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder may enter the real property on which the home is located to remove

the home. The real property owner must disclose to the owner or lienholder seeking to remove the home the location of the home and must grant that person reasonable access to the home. A person who removes the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns or previously owned an interest in the manufactured home, or that person's affiliate or related person:

(1) owns the real property on which the home is located; or

(2) claims that the home is abandoned.

SECTION 41. Sections 1201.219(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on the required [~~a~~] form [~~provided by the department~~]. The form must require the disclosure of the original dollar amount of the lien as well as the name and address of the person in whose name the manufactured home is listed on the tax

roll. The department on its Internet website shall disclose the date of each lien filing and the original amount of the lien claimed in each filing and shall provide a notice that the amount shown does not include additional amounts such as interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) [~~recordation of a lien with the department~~] is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. The tax assessor-collector for any taxing unit with the power to tax the manufactured home shall file any appropriate tax lien on the home. A single filing by a tax assessor-collector is a filing for each taxing unit for which the tax assessor is empowered to collect.

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien [~~security agreement by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

SECTION 42. Section 1201.220, Occupations Code, is amended to read as follows:

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each

manufactured home reported in the notice of installation to the department as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 43. Section 1201.251, Occupation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In accordance with Subsection (d), the board [~~The director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) To ensure that the standards and requirements adopted under this section are recommended by qualified persons, the board may adopt rules that provide for the approval of foundation systems and devices by licensed engineers. A generic installation standard adopted by rule shall first be reviewed by an advisory committee established by the board. The advisory committee must include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices. The advisory committee shall submit a report to the board providing each comment and concern regarding any proposed rule. The members of the committee are not personally liable for providing the advice to the board.

SECTION 44. Section 1201.253, Occupations Code, is amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

SECTION 45. Section 1201.255, Occupations Code, is amended

to read as follows:

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued under this chapter. An uninstalled manufactured home may not be occupied for any purpose [~~issued by the director~~].

(b) An installer may not install a manufactured home at a location that has evidence of ponding, run-off under heavy rains, or bare uncompacted soil unless:

(1) the installer obtains the owner's signature on a form adopted by 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

(2) the owner accepts that risk in writing.

SECTION 46. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect the [~~a manufacturing~~] facility of a license holder.

SECTION 47. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY STATE AGENCIES AND LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 48. Section 1201.302(a), Occupations Code, is amended to read as follows:

(a) To ensure that a manufactured home sold or installed in

this state complies with the standards code, the director may 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 the board [~~director~~].

SECTION 49. Subchapter G, Chapter 1201, Occupations Code, is amended by adding Section 1201.306 to read as follows:

Sec. 1201.306. ENGINEER APPROVAL OF INSPECTION COMPONENTS. In the inspection of the installation of a manufactured home under this chapter the department may use or permit the use of a device or procedure that has been reviewed and approved by a licensed engineer if the use complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 50. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship, other than cosmetic defects.

(b) The manufacturer's warranty is in effect until at least

the first anniversary of the date of initial installation of the home at the consumer's homesite or the date of closing of the consumer's acquisition of a new home that has already been installed, as applicable.

SECTION 51. Section 1201.352, Occupations Code, is amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON NEW HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship, except as provided by Subsection (a-1).

(a-1) The retailer may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the date of the:

(1) [~~date of~~] initial installation of the home at the consumer's homesite; or

(2) closing of the consumer's acquisition of the home if the home has already been installed.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the date of installation of the home, the retailer shall deliver to the consumer a copy of the warranty given to the retailer by the licensed installer.

SECTION 52. Section 1201.353, Occupations Code, is amended to read as follows:

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is considered to be notice to the manufacturer, [~~or~~] retailer, or installer beginning on the third business day after the date the department forwards to the applicable license holder the notice by regular mail or by electronic mail as a scanned copy of the notice.

SECTION 53. Section 1201.354, Occupations Code, is amended to read as follows:

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 54. Section 1201.355, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(d) Notwithstanding any other provision of this section, the department may perform a home inspection at any time if the department determines that there is a reasonable possibility that a

condition of the manufactured home may present an imminent threat to public health or safety. The department shall obtain an inspection search warrant if required by other law.

SECTION 55. Section 1201.356, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (f), (g), and (h) to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer's, or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer, or retailer an appropriate order for corrective action by the manufacturer, installer, or retailer, specifying a reasonable period for completion of the corrective action.

(f) The installer and retailer are responsible for the warranty of installation on new HUD-code manufactured homes. If the department determines that a complaint is covered by the installation warranty, the director shall issue to the installer an order requiring corrective action. If the installer fails to perform the corrective action, the installer is subject to the provisions of Section 1201.357 and the director shall issue the same order for corrective action to the retailer with an additional

period, not to exceed 10 days, allowed for performing the corrective action, unless additional time for compliance is needed, as established by a showing of good cause by the retailer.

(g) If the retailer is required to perform the corrective action under Subsection (f) because of the installer's failure to comply with the director's order, the retailer may seek reimbursement from the installer.

(h) Notwithstanding Subsection (f), the period for performing the required warranty work may be shortened by the director as much as reasonably possible if the warranty work may be necessary to address an imminent threat to public health or safety.

SECTION 56. Section 1201.357, Occupations Code, is amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within the period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked. The consumer may express the

consumer's views at the informal meeting. Following the meeting, the director shall:

(1) resolve the matter by agreed order;

(2) dismiss the matter if no violation is found to have occurred; or

(3) institute an administrative action that may include suspension, revocation, assessment of administrative penalties, or any combination of those actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for

failure to provide warranty service.

SECTION 57. Section 1201.358, Occupations Code, is amended to read as follows:

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR [~~HEARING RESULTS~~]. (a) Failure by the manufacturer, [~~or~~] retailer, or installer, as applicable, to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If~~] the director determines that the order issued under Section 1201.357 was incorrect regarding the warranty [~~that~~] obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the

obligation the right of indemnification against the other.

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 58. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For each installation [~~all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give [~~the manufactured home owner~~] a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The retailer who is responsible for the installation of a new HUD-code manufactured home shall give the manufactured home owner the warranty for the installation. If the retailer subcontracts the installation to a licensed installer, the retailer and installer are jointly and severally liable for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer has no obligation or liability under a warranty for a new manufactured home for any defect described in a written notice received from the consumer more than one year [~~two years~~] after the date of acquisition of a home that has already been installed, as

applicable, or the date of the installation.

SECTION 59. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. ADDITIONAL CORRECTIVE ACTION AUTHORITY. Notwithstanding the limitations and terms of a warranty, if during any inspection the department identifies an aspect of an installation that does not conform to the applicable requirements, the director may:

(1) order the license holder who performed the installation to correct the defect; or

(2) if that license holder is no longer licensed, issue an order directing another licensed installer to correct the installation and reimburse the installer from the trust fund for the costs of that corrective action.

SECTION 60. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 61. Section 1201.404(b), Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose valid claim is the earliest by date and time.

SECTION 62. Section 1201.405, Occupations Code, is amended

by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable and the director may not pay attorney's fees or actual damages:

(1) to reimburse an affiliate or related person of a license holder, unless the director issues an order under Section 1201.358(c);

(2) to correct a defect that is solely cosmetic in nature; or

(3) to address matters not provided for in this subchapter, unless those matters involve:

(A) a breach of warranty;

(B) a failure to return or apply in accordance with a written agreement money received from a consumer or to which the consumer was entitled; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home, including an agreement for goods or services involving steps, air conditioning, access to utilities, or sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including payments made under Section 1201.358, and may require consumers making claims that may be subject to reimbursement from the trust fund to provide reasonable estimates establishing those costs. The rules adopted by the board may specify procedures and requirements the board considers necessary and advisable for the administration of the trust fund.

SECTION 63. Section 1201.406, Occupations Code, is amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond related to the license; [~~and~~]

(2) investigate the claim;

(3) issue a preliminary determination on the claim; and

(4) give the consumer, the license holder, and any surety related to the license:

(A) an opportunity to resolve the matter by agreement; or

(B) the opportunity to dispute the preliminary determination.

(c) If the matter is not resolved as provided by Subsection (b)(4) before the 30th day after the date the preliminary determination is issued, the preliminary determination automatically becomes final and the director shall make demand on

the surety or deduct any payable amount of the claim from the license holder's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

SECTION 64. Section 1201.407, Occupations Code, is amended to read as follows:

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that had been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes in the determination the director considers to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall provide a license holder a period of 10 days [~~an opportunity~~] to comment on the preliminary determination.

(d) After considering the comments made in relation to the preliminary determination, if any, the director shall issue a final determination.

(e) Not later than the 10th day after the date of its

issuance, the final determination may be appealed to the board by giving written notice to the director, who shall submit the matter to the board for consideration at the next meeting for which the matter can be publicly posted in the manner as required by Chapter 551, Government Code.

(f) Any license [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(c) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license~~] holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 65. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be

made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 66. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. CONSUMER INFORMATION [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund. The director shall make the information available to consumers:

(1) on the department's Internet website; and

(2) in hard-copy format to any member of the public who submits a request for the information.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 67. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location. If the seller or transferor fails to forward to the purchaser or transferee the necessary, executed documents as required by this subsection, the purchaser or transferee may apply directly for the issuance of a statement of ownership and location.

SECTION 68. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place <u>and operate properly</u>.

SECTION 69. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) <u>A person may not</u> [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow <u>another</u> [~~any~~] person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the statement of ownership and location.

SECTION 70. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, a tax appraiser or a [~~the~~] tax assessor-collector [~~collector~~] may:

(1) apply to the department for a seal;

(2) pay the applicable fee; and

(3) recover that fee as part of the cost of the sale of the home.

(b-1) The tax appraiser or the tax assessor-collector assumes full responsibility for affixing to the home a seal issued to the tax appraiser or the tax assessor-collector under Subsection (b).

(c) A [~~The~~] seal issued to the tax appraiser or the tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 71. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A political subdivision of this state that identifies a manufactured home within its jurisdiction as a salvaged manufactured home may impose with respect to that home an inspection, a requirement for corrective action, or other requirements that would apply if the home were not a salvaged manufactured home.

(h) A license holder may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvaged and that has not been repaired as required by this chapter and the rules adopted under this chapter. The sale, exchange, lease-purchase, or installation of a salvaged manufactured home for use as a dwelling constitutes an imminent threat to public health or safety. A license holder that participates in a sale, exchange, lease-purchase, or installation in violation of this section:

(1) is subject to the imposition of penalties and other sanctions provided for in this chapter; and

(2) commits an offense punishable as a Class B misdemeanor.

SECTION 72. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and delivering that written approval to the

department.

SECTION 73. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 74. Section 1201.509, Occupations Code, is amended to read as follows:

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer[~~, salesperson, or agent of the retailer~~] may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

SECTION 75. Subchapter K, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF CERTAIN USED MANUFACTURED HOMES; OCCUPANCY OF HOMES PRIOR TO CLOSING. (a) A retailer may not sell or otherwise transfer a used manufactured home acquired in exchange for another manufactured home before completing the transaction involving the other manufactured home.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing

that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 76. Section 1201.551, Occupations Code, is amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) repeatedly failed to file with the department completed applications [~~timely provide to a consumer an application~~] for statements [~~a statement~~] of ownership and location in the time and manner required by this chapter [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the

department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had any other license issued by this state revoked or suspended by this state or a political subdivision or agency of this state.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which a demand for reimbursement is made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

SECTION 77. Section 1201.552, Occupations Code, is amended to read as follows:

Sec. 1201.552. HEARING CONCERNING LICENSE. The director may issue an order to revoke, suspend, or deny a new or renewal license. If not later than the 30th day after the date the order is issued the person against whom that order is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the order becomes final. The hearing and any related administrative

proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

SECTION 78. Section 1201.553, Occupations Code, is amended to read as follows:

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of an order, decision, or determination of the board or director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 79. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter or the rules adopted under this chapter, or a final order adopted or issued as provided by this chapter, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a license holder [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not

to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) If not later than the 30th day after the date the person receives notice of an administrative penalty the person against whom the penalty is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the administrative penalty becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case.

SECTION 80. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. An order issued by the director under this chapter automatically becomes a final order if the order is not appealed

before the 30th day after the date the order is issued. If the person to whom the order is issued files a written request for a hearing with the director, the order is considered to have been appealed and is a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings. The board shall issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSE HOLDER RECORDS. (a) The department may inspect a license holder's records during normal business hours without advance notice if the director determines that an inspection is necessary to:

(1) prevent a violation of this chapter;

(2) protect a consumer or another license holder; or

(3) assist another state or federal agency in an investigation.

(b) The director may request or issue a subpoena for the license holder's records.

(c) If the director determines that it is appropriate to detect and address suspected violations of this chapter, the department may carry out an undercover investigation in accordance with board-adopted rules.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. CRIMINAL PENALTY FOR PERFORMING ACTION

WITHOUT PROPER LICENSE. (a) A person who is not required to hold a license under this chapter commits an offense if the person performs an act that requires a license under this chapter.

(b) An offense under this section is a Class B misdemeanor. A subsequent conviction for an offense under this section is punishable as a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the director has reasonable cause to believe that a person licensed under this chapter has or intends to violate a provision of this chapter or the rules adopted under this chapter, to enforce compliance with this chapter the director may issue to the license holder without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both.

(b) The director may issue an order to a license holder to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to the violation if the license holder in any way is performing an action that relates to the sale, financing, or installation of a manufactured home or relates to providing goods or services in connection with the sale, financing, or installation of a manufactured home, provided that if the matter involves a law that is subject to administration or interpretation by a state agency other than the department, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing the order. The director may not issue an order under this subsection with respect to a matter that is subject to inspection and regulation by a state agency other than the department.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is issued requests a hearing, the director shall set and give notice of a hearing. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 30th day after the date on which an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided under law, the director, after the expiration of the 10-day period following the date the director provides notice to the person, may, without a prior hearing, suspend the person's license. The suspension continues until the person has complied with the cease and desist order or paid the administrative penalty. During the

period of suspension:

(1) the person whose license has been suspended may not perform an act that requires a license under this chapter; and

(2) all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom the compensation was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) must be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided notice of the time and place of the hearing not later than the third day before the hearing is scheduled to occur.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may prohibit the person from being a related person of a license holder unless the person obtains the prior written consent of the director.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions.

(b) If the person charged with a violation accepts the director's determination with respect to an administrative penalty, the director shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(c) Not later than the 30th day after the date on which the director's determination becomes final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the facts of the violation, the amount of the penalty, or both the facts of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the director's order assessing the penalty is subject to the substantial evidence rule.

(g) If, after judicial review, the penalty is reduced or not assessed, the director as applicable shall remit to the person charged the appropriate amount, including accrued interest if the penalty has been paid, or shall execute a release of any supersedeas bond that was posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to

the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the division director, may institute an action for injunctive relief to restrain the person from continuing the violation and for a civil penalty of not more than $1,000 for each violation and of not more than $250,000 in the aggregate. A civil action filed under this subsection must be filed in a district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 81. Section 2306.0724, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A housing sponsor who fails to file a report in a timely manner is subject to the following sanctions, as determined by the

department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Subsection (e) [~~Section 2306.6023~~].

(e) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 82. Section 2306.186, Government Code, is amended by amending Subsection (k) and adding Subsection (m) to read as follows:

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Subsection (m) [~~Section 2306.6023~~]. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(m) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 83. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its Internet website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and provide a hard copy of that information to those persons on request by those persons.

SECTION 84. Section 11.432, Tax Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by:

(1) a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) [~~or be accompanied by~~] a verified copy of the purchase contract showing that the applicant is the purchaser of

the manufactured home;

(3) a photostatic copy of the current title page for the manufactured home as that page is displayed on the Internet website of the Texas Department of Housing and Community Affairs; or

(4) the applicable computer records of the Texas Department of Housing and Community Affairs.

(b-1) The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether:

(1) an owner has elected to treat the manufactured home as real property or personal property; or

(2) the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 85. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home, the collector shall enter into a contract under this section with a property owner who:

(1) owns the manufactured home; and

(2) requests the establishment of the escrow account.

SECTION 86. Section 32.03, Tax Code, is amended by amending Subsections (a-1), (a-2), and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a-1) With regard to a manufactured home, a tax lien may be

recorded at any time not later than the expiration of the six-month period following the end of the calendar year for which the tax was owed. The tax lien may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against the owner of a new manufactured home who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer title of a manufactured home until all tax liens perfected on the home have been filed in a timely manner with the Texas Department of Housing and Community Affairs and until all personal property taxes on the manufactured home that accrued on each January 1 within 18 months of the date of the sale are extinguished or satisfied and released. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, "manufactured home" has the meaning

assigned by Section 32.015(b). Unless a tax lien has been filed in a timely manner with the Texas Department of Housing and Community Affairs, a taxing unit or an agent of the taxing unit may not use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax lien.

(b-1) A taxpayer is entitled to designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(b-2) Notwithstanding any other provision of law, if a manufactured home was omitted from the tax roll at any time before the second anniversary of the date on which taxes are due, the taxing unit may file a tax lien not later than the 150th day after the date on which the tax becomes delinquent.

(b-3) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. To enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed

amounts to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may increase once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 87. The following provisions are repealed:

(1) Section 1201.054(c), Occupations Code;

(2) Section 1201.059, Occupations Code;

(3) Section 1201.112, Occupations Code;

(4) Section 1201.163, Occupations Code;

(5) Sections 1201.214(c) and (d), Occupations Code;

(6) Section 1201.408, Occupations Code; and

(7) Section 2306.6023, Government Code.

SECTION 88. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 89. This Act takes effect September 1, 2007.

LIST OF HOUSE AMENDMENTS PREVIOUSLY UNDER CONSIDERATION

HB1460-Third Reading

AMENDMENT#	AUTHOR	DESCRIPTION	ACTION
1	Otto	Amendment	Adopted
2	Orr	Amendment to Amendment	Adopted

3rd Reading

ADOPTED

APR 26 2007

Robert Haney
Chief Clerk
House of Representatives

as amended

NCB

INSERT A

FLOOR AMENDMENT NO. 1 BY: Otto

Amend H.B. No. 1460, on third reading, in SECTION 2 of the bill, in added Subsection (e), Section 1201.008, Occupations Code, by striking "Notwithstanding a zoning law or any other law," and substituting "Notwithstanding a zoning law or any other law, unless prohibited by an ordinance or charter of a home-rule municipality, or general law".

((2))

3rd Reading

FLOOR AMENDMENT NO. 2 BY: Rob Orr

Amend the Otto amendment to H.B. No. 1460, on third reading, on page 1, at the end of line 5, by inserting "or general law".

ADOPTED

APR 26 2007

Robert Haney
Chief Clerk
House of Representatives

X:\COUNCIL\FLOOR\HB 1460(JPL)0426-1024541-FA.doc

HOUSE ENGROSSMENT

By: Haggerty H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended by amending Subdivisions (5), (13), (20), and (23-a) and adding Subdivisions (1-a), (17-a), (18-a), and (25) to read as follows:

(1-a) "Affiliate" means a person who, with respect to a license holder, is under the common control of a third person who has the power to:

(A) directly or indirectly vote 25 percent or more interest in the license holder or an entity under the authority of the license holder;

(B) establish policy for the license holder, directly or through a related person; or

(C) hire, elect, or otherwise designate related persons for the license holder.

(5) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(13) "Lease-purchase" means entering into:

(A) a lease contract for a manufactured home in which the lessor retains title; or

(B) another agreement that contains [~~containing~~] a provision conferring on the lessee an option to purchase a

manufactured home.

(17-a) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(18-a) "Related person" means a person who, directly or indirectly with respect to a license holder:

(A) participates in management, policy decisions, or day-to-day activities subject to this chapter; or

(B) has been found by the department in a final order to be a related person.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(25) "Used manufactured home" means a manufactured home for which a statement of ownership and location has been issued or a manufactured home that has been occupied for any use, except that the term does not include:

(A) a manufactured home used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home;

(ii) was installed but never occupied;

(iii) had a statement of ownership and location issued with respect to the home; and

(iv) was taken back from the consumer because of a first payment default or an agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding a zoning law or any other law, unless prohibited by an ordinance or charter of a home-rule or general law municipality, if a manufactured home occupies a specific lot in a municipality, the owner of the manufactured home may move the manufactured home from that lot and place another manufactured home on the lot, provided that the replacement is a newer manufactured home and at least as large in living space as the manufactured home that was initially located on the lot.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in

order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Sections 1201.054(b) and (d), Occupations Code, are amended to read as follows:

(b) If requested by any member of the public, the board shall hold a hearing on any rule that the board proposes to adopt, other than a rule proposed for adoption under emergency rulemaking. The board must provide notice of a hearing under this subsection not later than the 10th day before the date the hearing is scheduled to be held. If a rule is adopted under emergency rulemaking, only the requirements of Chapter 2001, Government Code, apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to an installation standard [~~standards~~] may not take effect later than the 60th day after the date of publication of notice unless:

(1) the board determines that an earlier effective date is required to meet an emergency; and

(2) the installation standard is adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. [~~AMOUNT OF~~] FEES. (a) The board shall establish in reasonable amounts [~~the~~] fees [~~imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary~~] to cover any purpose under [~~the cost of administering~~] this chapter. If the department rules under this chapter provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) A fee imposed by this chapter or a rule under this chapter is:

(1) earned on the date the applicable payment is received by the department; and

(2) not subject to refund.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Sections 1201.101(d), (f), and (g), Occupations Code, are amended to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured

housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person who is not required to hold a license as described by Section 1201.102 [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 7. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ an unlicensed person to assist the installer in performing installation functions if the licensed installer supervises the unlicensed person and maintains a list of all unlicensed persons employed. The director may issue an

order to prohibit a person who is not licensed as an installer from performing installation functions without the supervision of a licensed installer.

(b) A license holder may engage a person who is not licensed under this chapter but holds another license issued by this state to provide goods and services in accordance with that license, including the installation or connection of air conditioning, plumbing, or electrical systems.

(c) A person who [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.~~

[~~(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.~~

[~~(c) In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or a broker's license or who is a related person of that license holder[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 8. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (c-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a

license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who is anticipated to be a related person at the time the license is issued;

(2) each [~~the~~] trade name and the name of each business organization [~~name~~] by which the applicant does business under this chapter and[~~, if incorporated, the name registered with the secretary of state and~~] the address of each [~~the~~] business organization; [~~and~~]

(3) the dates on which the applicant became the owner and operator of the business; and

(4) each location to which the license will apply.

(c-1) The applicant shall maintain, at the applicant's principal office or another location designated by the applicant within this state, all records required of the applicant under this chapter.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 9. Section 1201.104, Occupations Code, is amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, or rebuilder's license, a person who was not licensed or registered with the

department or a predecessor agency on September 1, 1987, must, within the year preceding the date of the application for the person's initial license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must employ at least one related person who meets the requirement described by this subsection.

(b) Each individual who is a related person of the applicant must attend and successfully complete 20 hours of instruction in the law described by Subsection (a). The individual must complete the next course of instruction offered after the date on which the individual becomes a related person. The individual is automatically barred from acting as a related person until the individual successfully completes the course of instruction required by Subsection (a).

(c) An applicant for a salesperson's license must successfully complete the next course of instruction offered after the date the person is licensed. A salesperson who fails to successfully complete the course of instruction described by Subsection (a) will automatically have the person's license suspended until the person successfully completes the course of instruction.

(d) [~~The director may not issue a license to that person until the course of instruction is completed.~~

[~~(b)~~] The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules regarding the content of the

course of instruction and the requirements for board approval of the course of instruction, including a rule requiring the course to be presented live and a rule prohibiting any electronic transmission of the course.

(f) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(g) Successful passage of an [~~(f) An~~] examination must [~~may not~~] be a prerequisite for the successful completion of an initial course of instruction required under this section, but may not be a prerequisite for continuing education courses [~~made a prerequisite of licensing~~].

SECTION 10. Section 1201.105, Occupations Code, is amended to read as follows:

Sec. 1201.105. SECURITY REQUIRED. (a) The department may

not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amount that is due directly to the retailer under this chapter.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department is unable to obtain timely reimbursements from a surety or the department determines that a surety has experienced a deterioration in its financial condition, the board may direct the director to discontinue the acceptance of bonds issued by that surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each additional branch location of a retailer;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) The director may increase the fee amounts under Subsection (a) with respect to the issuance of an initial, renewal, or subsequent license based on an application described by Section 1201.118.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a license holder or a business entity under which the [~~corporation that is a~~] license holder conducts business; or

(2) location.

(b) A license holder shall notify the department not later than the 10th day before the date of a change described in Subsection (a).

(c) The license holder shall provide to the department [~~director may require~~] a proper endorsement of the original bond to avoid an interruption in the application of the bond to the license.

SECTION 13. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.1125 to read as follows:

Sec. 1201.1125. PROBATIONARY INSTALLER'S OR SALESPERSON'S LICENSE. (a) An applicant for an initial installer's license receives the license only on a probationary basis until the department inspects a sufficient number of installations performed by the installer and fails to find an identified material violation

of this chapter or the rules adopted under this chapter. The board, with the advice of the advisory committee established under Section 1201.251, shall adopt rules to determine the number of successful installations required for termination of the probationary period under this subsection.

(b) The board shall adopt rules under which the director may elect to issue a renewal installer's license or an initial or renewal salesperson's license on a probationary basis.

(c) If the director determines that a salesperson or installer should receive a probationary license under Subsection (b), the director may issue the probationary license on the terms and for the period the director considers reasonable in accordance with the rules adopted under that subsection.

(d) A person who is issued a probationary license under Subsection (b) may appeal by written notice to the director the terms of the license or the period for which the license is issued not later than the 30th day after the date the license is issued. If the license holder appeals under this subsection, the director shall set the matter for a hearing to be conducted by the State Office of Administrative Hearings. The hearing and any related administrative proceedings are considered to be a contested case subject to Chapter 2001, Government Code.

(e) If the license holder does not appeal as permitted by Subsection (d), the probationary license remains in effect for the period and in accordance with the terms specified in the license.

SECTION 14. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. [~~CERTIFICATION AND~~] CONTINUING EDUCATION PROGRAMS. (a) The department [~~board~~] shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for license holders [~~salespersons regulated~~] under this chapter. A continuing education program must:

(1) be at least six hours in length; and

(2) include the current rules of the department under this chapter and other matters the department considers relevant.

(b) As a prerequisite for license renewal, a license holder must attend a [~~A person who holds a salesperson's license must participate in certification and~~] continuing education course approved or administered by the department under this section [~~programs as provided by Subsection (c)~~].

[~~(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution.~~

[~~(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.~~

[~~(e) A salesperson must complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is~~

~~issued. To renew a salesperson's license, a salesperson regulated under this chapter must complete an additional eight hours of certification and continuing education programs for each renewal. The programs must be presented by a board-approved organization or educational institution and must include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.~~

[~~(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.~~

[~~(g) The board shall suspend the license of a salesperson regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the salesperson's completion of the programs.~~]

SECTION 15. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION. A license issued under this chapter, other than a probationary license, [~~(a) A manufacturer's, retailer's, broker's, or installer's license is valid for one year. A salesperson's license~~] is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

[~~(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall~~

~~prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 16. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. ADDITIONAL PROCEDURES FOR CERTAIN LICENSE APPLICATIONS. The board shall adopt rules providing for the additional review and scrutiny of an initial, renewal, or subsequent license application that involves an applicant or a related person who has previously:

(1) in a final order issued by the department, been found to have:

(A) participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license; or

(B) engaged in activity subject to this chapter without holding the required license;

(2) caused the trust fund to incur unreimbursed payments or claims; or

(3) failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 17. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a

specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 18. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 19. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) Not later than the 15th day after the date a consumer exercises the consumer's right of rescission as provided by Section 1201.1521, the retailer shall refund to the consumer all money and other consideration received from the consumer without offset or deduction if the retailer and the consumer entered into a binding written agreement under which the consumer submitted to the retailer a deposit that was a down payment for the home.

SECTION 20. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge. The right of rescission applies only to a transaction between a retailer and a consumer.

(b) Subject to rules adopted by the board, a consumer may modify or waive for a bona fide personal financial emergency the consumer's right to rescind the contract without penalty or charge. The rules adopted by the board shall, to the extent practicable, be modeled on the federal rules for the modification or waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226.

SECTION 21. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the person's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 22. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer unless the seller is a consumer in a transaction as provided by Section 1201.456.

(c) A broker in a transaction under this chapter shall provide to a person who engages the broker's services a written disclosure of any interest that the broker represents in the transaction.

(d) A broker may assist a person who is offering or otherwise engaging in the sale, exchange, or lease-purchase of a manufactured home only if that person holds a license required by this chapter.

SECTION 23. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) The copies of permits and the lists and information required under this section may be provided electronically.

(e) The department shall pay the reasonable cost of providing the materials required [~~copies or the list and information~~] under Subsection (b) or (c) unless the materials are provided electronically.

SECTION 24. Sections 1201.162(a) and (e), Occupations Code, are amended to read as follows:

(a) Before the completion of a credit application or not later than one day before entering into an agreement for a sale, exchange, or lease-purchase that will not be financed, the retailer [~~or agent~~] must provide to the consumer a written disclosure in a form prescribed by rules adopted by the board. The disclosure form shall:

(1) be printed in at least 12-point type;

(2) address matters of concern relating to the costs and obligations that may be associated with manufactured home ownership, matters to be considered in making any financing decisions, related costs that may arise in acquiring a manufactured home, and other matters the board considers appropriate to promote informed decision-making by the consumer with respect to the acquisition and ownership of a manufactured home; and

(3) conspicuously disclose the consumer's right of rescission. [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers,~~

~~retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have~~

~~mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~]

(e) Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a

subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) constitutes conclusive proof that the notice was delivered. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission immediately ceases on the date the lien is filed with the department.

SECTION 25. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the contract, the consumer may modify or waive the consumer's right to rescind the contract or the waiting period provided by Subsection (a) if the consumer

determines that the acquisition of the manufactured home is needed for a bona fide personal financial emergency. If the consumer has a bona fide personal financial emergency that requires the immediate acquisition of the manufactured home, the consumer shall give the retailer a dated written statement that describes the personal financial emergency, specifically modifies or waives the waiting period or the right of rescission, as applicable, and bears the signature of each consumer who is entitled to the waiting period or right of rescission. On receipt of the written statement described by this subsection, the retailer shall immediately provide to the consumer all of the disclosures required by this subchapter and engage in the transaction without reference to the required waiting period or the right of rescission.

(c) A form printed for the purpose of Subsection (b) may be used only:

(1) with respect to a manufactured home that is to be located in an area that has been declared by the governor to be a disaster area as provided by Section 418.014, Government Code; and

(2) until the first anniversary of the date the governor declared the area to be a disaster area.

SECTION 26. Section 1201.203, Occupations Code, is amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership and location [~~at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect the holder of a lien [~~a lienholder~~] recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

SECTION 27. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the board [~~director~~] or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the board [~~director~~], each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory lien [~~the manufacturer's~~

~~certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer shall [~~may~~] submit the manufacturer's certificate for that home to the department. If an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not produce the certificate as required by this subsection, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to that effect to each party currently reflected in the department's records as having a recorded lien on the inventory of that retailer. Failure to include the manufacturer's certificate with an application described by this subsection does not impair a consumer's ability to obtain, on submitting an otherwise complete application, a statement of ownership and location free from a lien other than a lien created by or consented to by the consumer.

SECTION 28. Section 1201.205, Occupations Code, is amended to read as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be issued on a board-approved form and must provide:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and address of the new owner, if the owner's address is different from the address of the home;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address of the real property on [~~the county of this state in~~] which the home has been [~~is~~] installed for occupancy, including the name of the county and, if different from the address of the home, the address of the new owner of the home;

(6) in chronological order of recordation, the date of each lien other than a tax lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens which must state:

"On January 1st of each year, a tax lien is placed on a manufactured home in favor of each taxing unit with taxing authority over the real property on which the home is located. To enforce that lien, the lien must be recorded with the manufactured housing division of the Texas Department of Housing and Community Affairs, as provided by law. You may check that division's records through its Internet website or contact the division to identify any recorded tax liens. To identify the amount of unpaid tax liability, contact the taxing unit for the county in which the home

is located on January 1st of that year" [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) [~~the location of the home;~~

[~~(10)~~] a statement of whether the owner has elected to treat the home as real property or personal property;

(10) [~~(11)~~] statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(11) [~~(12)~~] any other information the board [~~director~~] requires.

SECTION 29. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the board-approved form [~~made by affidavit~~].

(i) Notwithstanding Subsection (d), if a mortgage loan made in connection with a transaction under this chapter is to be secured by real property that includes the manufactured home, the mortgage loan is funded, and a deed of trust covering the real property and all improvements on the real property is recorded, but the licensed

title company or attorney who closed the loan failed to complete the conversion of the manufactured home to real property in accordance with this chapter, the holder or servicer of the mortgage loan at any time may apply for a statement of ownership and location, including making an election in the application with respect to real property status, and may obtain from the department a certified copy of the statement of ownership and location if, not later than the 60th day before the date of an application for a statement of ownership and location electing real property status, the record owner of the home, as reflected in the department's records, has been provided written notice by certified mail at:

(1) the physical address of the location of the home and, if the address of the record owner is different from that of the location of the home, the mailing address of the owner; and

(2) any other location known or believed after a reasonable inquiry by the holder or servicer of the loan to be an address at which the owner may receive mail or an address of record.

(j) The board by rule shall require evidence that the mortgage loan holder or servicer applying for a real property election has complied with the requirements of this section.

SECTION 30. Section 1201.206, Occupations Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections (g) through (i) to read as follows:

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed and submitted. The consumer

shall return the completed application to the retailer. The retailer shall surrender to the department the manufacturer's certificate in accordance with Section 1201.204 and the manufacturer's statement of origin at the same time that the retailer submits the application for the first statement of ownership and location.

(c) Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(d) Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) If the seller accepts a used manufactured home as part

of the consideration for the sale of another manufactured home, the seller shall provide to the department a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the used manufactured home from the previous owner of the used manufactured home to the seller at the same time that the seller files the completed application for the issuance of a statement of ownership and location for the manufactured home that was sold by the seller in that transaction. If the seller is a retailer, on the application for the issuance of the new statement of ownership and location for the used manufactured home the seller shall indicate whether that home has been added to the inventory of the retailer.

(h) At the time the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that has not been added to a retailer's inventory, the seller shall file with the department a written statement from the tax assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date of the transaction in which the seller acquired the used manufactured home.

(i) If a person who sells a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within the applicable period, the department may assess an additional fee of not less than $100 against the seller. The department may enforce the collection of the additional fee from the seller through a judicial

proceeding. The department shall place on the application for the statement of ownership and location the following statement in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF AT LEAST ONE HUNDRED DOLLARS ($100). A LATE APPLICATION CANNOT BE PROCESSED UNTIL THE FEE DESCRIBED BY THIS PARAGRAPH IS PAID IN FULL."

SECTION 31. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2061 to read as follows:

Sec. 1201.2061. NOTICE OF INSTALLATION. (a) A notice of installation must be filed with the department on the board's prescribed form. If the installation involves a secondary relocation of the home, the notice must be accompanied by:

(1) a copy of the original notice of installation; or

(2) certification that a copy of the original notice of installation has been provided to the chief appraiser of the county in which the home is installed.

(b) The notice required by Subsection (a) may be delivered by certified mail or by electronic transmission of the document in a commonly readable format.

(c) If the method to report the installation of a relocated home is the method specified by Subsection (a)(2), the department may adopt a discounted fee for filing the notice of installation.

(d) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the

department shall, on request, provide a tax assessor-collector with one copy of any reported notice of installation.

SECTION 32. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2062 to read as follows:

Sec. 1201.2062. DIFFICULTY IN DOCUMENTING CHAIN OF TITLE. Notwithstanding any provision in this chapter, if a person acquires a manufactured home and the owner of record and an intervening owner of a lien on the home cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if that person submits an application for the statement and provides:

(1) a supporting affidavit describing the chain of title and the status of any liens; and

(2) any reasonable supporting proof that the director may require.

SECTION 33. Section 1201.207, Occupations Code, is amended to read as follows:

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) As soon as practicable after June 30 of each year, the

department shall, except for applications relating to new manufactured homes and applications accompanied by tax certificates, discontinue its issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. The department shall post on its Internet website a notice as to the anticipated date on which the department intends to begin issuing statements of ownership and location again and the anticipated date on which the department intends to again comply with the period for processing applications prescribed by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the statement of ownership and location in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the record owner of the home and to each [~~any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, [~~either~~] in writing, [~~or~~] by operation of law, or by the department's procedures provided by Section 1201.2062 to document ownership and lien status. After the department has issued a statement of ownership and location, the

department may not alter the record of the ownership or lien status of a manufactured home for activity that occurred before the issuance of the statement of ownership and location unless the department:

(1) obtains the written permission of the owner of record for the manufactured home or a court order; or

(2) determines that an exception is necessary in accordance with rules adopted by the board.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a retailer in the ordinary course of business, regardless of whether a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without the need to provide any notice and is entitled to ownership of the manufactured home free of all liens and entitled to a statement of ownership and location to that effect on payment by the consumer of the purchase price to the retailer. If an existing lien on the manufactured home is perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

SECTION 34. Section 1201.2075, Occupations Code, is amended to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 35. Section 1201.2076, Occupations Code, is amended to read as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the [~~The~~] department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is

released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) The department may rely on a commitment for title insurance, a title insurance policy, or an attorney's title opinion to determine that a lien on real property has been released as required by Subsection (a).

SECTION 36. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) A license holder who sells, exchanges, or lease-purchases a new manufactured home to a consumer shall pay the required sales and use tax on the home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If a license holder sells, exchanges, or lease-purchases a home without paying the required sales and use tax, the payment shall be made from the trust fund for an amount not more than the maximum amount available in bond or other security required by Section 1201.106 for the person's license. The trust fund may file with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund under this section [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 37. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as

follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If an appeal is not timely made, the revocation or suspension described in the notice becomes final.

(d) The department shall prohibit any activity with respect to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 38. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

SECTION 39. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or

salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or recordation of liens, including tax liens.

SECTION 40. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property on which the home is located. The notice must include the physical address at which the home is currently located. If the person giving notice knows that the person for whom the notice is intended does not reside and is no longer receiving mail at that address, a reasonable effort shall be made to locate the person for whom the notice is intended and to give the person notice at an address where the person receives mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder

may enter the real property on which the home is located to remove the home. The real property owner must disclose to the owner or lienholder seeking to remove the home the location of the home and must grant that person reasonable access to the home. A person who removes the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns or previously owned an interest in the manufactured home, or that person's affiliate or related person:

(1) owns the real property on which the home is located; or

(2) claims that the home is abandoned.

SECTION 41. Sections 1201.219(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on the required [~~a~~] form [~~provided by the department~~]. The form must require the disclosure of the original dollar amount of the lien as well as the name and address of the

person in whose name the manufactured home is listed on the tax roll. The department on its Internet website shall disclose the date of each lien filing and the original amount of the lien claimed in each filing and shall provide a notice that the amount shown does not include additional amounts such as interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) [~~recordation of a lien with the department~~] is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. The tax assessor-collector for any taxing unit with the power to tax the manufactured home shall file any appropriate tax lien on the home. A single filing by a tax assessor-collector is a filing for each taxing unit for which the tax assessor is empowered to collect.

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien [~~security agreement by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

SECTION 42. Section 1201.220, Occupations Code, is amended to read as follows:

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax

assessor-collector in this state a monthly report that, for each manufactured home reported in the notice of installation to the department as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 43. Section 1201.251, Occupation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In accordance with Subsection (d), the board [~~The director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) To ensure that the standards and requirements adopted under this section are recommended by qualified persons, the board may adopt rules that provide for the approval of foundation systems and devices by licensed engineers. A generic installation standard adopted by rule shall first be reviewed by an advisory committee established by the board. The advisory committee must include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices. The advisory committee shall submit a report to the board providing each comment and concern regarding any proposed rule. The members of the committee are not personally liable for providing the advice to the board.

SECTION 44. Section 1201.253, Occupations Code, is amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

SECTION 45. Section 1201.255, Occupations Code, is amended to read as follows:

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued under this chapter. An uninstalled manufactured home may not be occupied for any purpose [~~issued by the director~~].

(b) An installer may not install a manufactured home at a location that has evidence of ponding, run-off under heavy rains, or bare uncompacted soil unless:

(1) the installer obtains the owner's signature on a form adopted by 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

(2) the owner accepts that risk in writing.

SECTION 46. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect the [~~a manufacturing~~] facility of a license holder.

SECTION 47. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY STATE AGENCIES AND LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 48. Section 1201.302(a), Occupations Code, is amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

SECTION 49. Subchapter G, Chapter 1201, Occupations Code, is amended by adding Section 1201.306 to read as follows:

Sec. 1201.306. ENGINEER APPROVAL OF INSPECTION COMPONENTS. In the inspection of the installation of a manufactured home under this chapter the department may use or permit the use of a device or procedure that has been reviewed and approved by a licensed engineer if the use complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 50. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship, other than cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the date of closing of the consumer's acquisition of a new home that has already been installed, as applicable.

SECTION 51. Section 1201.352, Occupations Code, is amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON NEW HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship, except as provided by Subsection (a-1).

(a-1) The retailer may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the date of the:

(1) [~~date of~~] initial installation of the home at the consumer's homesite; or

(2) closing of the consumer's acquisition of the home

if the home has already been installed.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the date of installation of the home, the retailer shall deliver to the consumer a copy of the warranty given to the retailer by the licensed installer.

SECTION 52. Section 1201.353, Occupations Code, is amended to read as follows:

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is considered to be notice to the manufacturer, [~~or~~] retailer, or installer beginning on the third business day after the date the department forwards to the applicable license holder the notice by regular mail or by electronic mail as a scanned copy of the notice.

SECTION 53. Section 1201.354, Occupations Code, is amended

to read as follows:

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 54. Section 1201.355, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(d) Notwithstanding any other provision of this section, the department may perform a home inspection at any time if the

department determines that there is a reasonable possibility that a condition of the manufactured home may present an imminent threat to public health or safety. The department shall obtain an inspection search warrant if required by other law.

SECTION 55. Section 1201.356, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (f), (g), and (h) to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer's, or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer, or retailer an appropriate order for corrective action by the manufacturer, installer, or retailer, specifying a reasonable period for completion of the corrective action.

(f) The installer and retailer are responsible for the warranty of installation on new HUD-code manufactured homes. If the department determines that a complaint is covered by the installation warranty, the director shall issue to the installer an order requiring corrective action. If the installer fails to perform the corrective action, the installer is subject to the provisions of Section 1201.357 and the director shall issue the

same order for corrective action to the retailer with an additional period, not to exceed 10 days, allowed for performing the corrective action, unless additional time for compliance is needed, as established by a showing of good cause by the retailer.

(g) If the retailer is required to perform the corrective action under Subsection (f) because of the installer's failure to comply with the director's order, the retailer may seek reimbursement from the installer.

(h) Notwithstanding Subsection (f), the period for performing the required warranty work may be shortened by the director as much as reasonably possible if the warranty work may be necessary to address an imminent threat to public health or safety.

SECTION 56. Section 1201.357, Occupations Code, is amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within the period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should

not be suspended or revoked. The consumer may express the consumer's views at the informal meeting. Following the meeting, the director shall:

(1) resolve the matter by agreed order;

(2) dismiss the matter if no violation is found to have occurred; or

(3) institute an administrative action that may include suspension, revocation, assessment of administrative penalties, or any combination of those actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

SECTION 57. Section 1201.358, Occupations Code, is amended to read as follows:

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR [~~HEARING RESULTS~~]. (a) Failure by the manufacturer, [~~or~~] retailer, or installer, as applicable, to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If~~] the director determines that the order issued under Section 1201.357 was incorrect regarding the warranty [~~that~~] obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the obligation the right of indemnification against the other.

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 58. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For each installation [~~all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give [~~the manufactured home owner~~] a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The retailer who is responsible for the installation of a new HUD-code manufactured home shall give the manufactured home owner the warranty for the installation. If the retailer subcontracts the installation to a licensed installer, the retailer and installer are jointly and severally liable for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer has no obligation or liability under a warranty for a new manufactured home for any defect described in a written notice received from the consumer more than one year [~~two years~~] after the date of

acquisition of a home that has already been installed, as applicable, or the date of the installation.

SECTION 59. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. ADDITIONAL CORRECTIVE ACTION AUTHORITY. Notwithstanding the limitations and terms of a warranty, if during any inspection the department identifies an aspect of an installation that does not conform to the applicable requirements, the director may:

(1) order the license holder who performed the installation to correct the defect; or

(2) if that license holder is no longer licensed, issue an order directing another licensed installer to correct the installation and reimburse the installer from the trust fund for the costs of that corrective action.

SECTION 60. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 61. Section 1201.404(b), Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose valid claim is the earliest by date and time.

SECTION 62. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable and the director may not pay attorney's fees or actual damages:

(1) to reimburse an affiliate or related person of a license holder, unless the director issues an order under Section 1201.358(c);

(2) to correct a defect that is solely cosmetic in nature; or

(3) to address matters not provided for in this subchapter, unless those matters involve:

(A) a breach of warranty;

(B) a failure to return or apply in accordance with a written agreement money received from a consumer or to which the consumer was entitled; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home, including an agreement for goods or services involving steps, air conditioning, access to utilities, or sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including payments made under Section 1201.358, and may require consumers making claims that may be subject to reimbursement from the trust fund to provide reasonable estimates establishing those costs. The rules adopted by the board may specify procedures and requirements the board considers necessary and advisable for the

administration of the trust fund.

SECTION 63. Section 1201.406, Occupations Code, is amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond related to the license; [~~and~~]

(2) investigate the claim;

(3) issue a preliminary determination on the claim; and

(4) give the consumer, the license holder, and any surety related to the license:

(A) an opportunity to resolve the matter by agreement; or

(B) the opportunity to dispute the preliminary determination.

(c) If the matter is not resolved as provided by Subsection (b)(4) before the 30th day after the date the preliminary determination is issued, the preliminary determination

automatically becomes final and the director shall make demand on the surety or deduct any payable amount of the claim from the license holder's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

SECTION 64. Section 1201.407, Occupations Code, is amended to read as follows:

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that had been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes in the determination the director considers to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall provide a license holder a period of 10 days [~~an opportunity~~] to comment on the preliminary determination.

(d) After considering the comments made in relation to the preliminary determination, if any, the director shall issue a final determination.

(e) Not later than the 10th day after the date of its issuance, the final determination may be appealed to the board by giving written notice to the director, who shall submit the matter to the board for consideration at the next meeting for which the matter can be publicly posted in the manner as required by Chapter 551, Government Code.

(f) Any license [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license~~] holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 65. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 66. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. CONSUMER INFORMATION [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund. The director shall make the information available to consumers:

(1) on the department's Internet website; and

(2) in hard-copy format to any member of the public who submits a request for the information.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 67. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location. If the seller or transferor fails to forward to the purchaser or transferee the necessary, executed documents as required by this subsection, the purchaser or transferee may apply directly for the

issuance of a statement of ownership and location.

SECTION 68. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 69. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) A person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow another [~~any~~] person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the

statement of ownership and location.

SECTION 70. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, a tax appraiser or a [~~the~~] tax assessor-collector [~~collector~~] may:

(1) apply to the department for a seal;

(2) pay the applicable fee; and

(3) recover that fee as part of the cost of the sale of the home.

(b-1) The tax appraiser or the tax assessor-collector assumes full responsibility for affixing to the home a seal issued to the tax appraiser or the tax assessor-collector under Subsection (b).

(c) A [~~The~~] seal issued to the tax appraiser or the tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 71. Section 1201.461, Occupations Code, is amended

by adding Subsections (g) and (h) to read as follows:

(g) A political subdivision of this state that identifies a manufactured home within its jurisdiction as a salvaged manufactured home may impose with respect to that home an inspection, a requirement for corrective action, or other requirements that would apply if the home were not a salvaged manufactured home.

(h) A license holder may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvaged and that has not been repaired as required by this chapter and the rules adopted under this chapter. The sale, exchange, lease-purchase, or installation of a salvaged manufactured home for use as a dwelling constitutes an imminent threat to public health or safety. A license holder that participates in a sale, exchange, lease-purchase, or installation in violation of this section:

(1) is subject to the imposition of penalties and other sanctions provided for in this chapter; and

(2) commits an offense punishable as a Class B misdemeanor.

SECTION 72. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a

licensed engineer and delivering that written approval to the department.

SECTION 73. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 74. Section 1201.509, Occupations Code, is amended to read as follows:

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer[~~, salesperson, or agent of the retailer~~] may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

SECTION 75. Subchapter K, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF CERTAIN USED MANUFACTURED HOMES; OCCUPANCY OF HOMES PRIOR TO CLOSING. (a) A retailer may not sell or otherwise transfer a used manufactured home acquired in exchange for another manufactured home before completing the transaction involving the other manufactured home.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase before the closing of any required financing unless

the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 76. Section 1201.551, Occupations Code, is amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) repeatedly failed to file with the department completed applications [~~timely provide to a consumer an application~~] for statements [~~a statement~~] of ownership and location in the time and manner required by this chapter [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had any other license issued by this state revoked or suspended by this state or a political subdivision or agency of this state.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which a demand for reimbursement is made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

SECTION 77. Section 1201.552, Occupations Code, is amended to read as follows:

Sec. 1201.552. HEARING CONCERNING LICENSE. The director may issue an order to revoke, suspend, or deny a new or renewal license. If not later than the 30th day after the date the order is issued the person against whom that order is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the order

becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

SECTION 78. Section 1201.553, Occupations Code, is amended to read as follows:

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of an order, decision, or determination of the board or director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 79. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter or the rules adopted under this chapter, or a final order adopted or issued as provided by this chapter, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a license holder [~~retailer~~] who fails to provide information to a consumer as

required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) If not later than the 30th day after the date the person receives notice of an administrative penalty the person against whom the penalty is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the administrative penalty becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case.

SECTION 80. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. An order issued by the director under this chapter

automatically becomes a final order if the order is not appealed before the 30th day after the date the order is issued. If the person to whom the order is issued files a written request for a hearing with the director, the order is considered to have been appealed and is a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings. The board shall issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSE HOLDER RECORDS. (a) The department may inspect a license holder's records during normal business hours without advance notice if the director determines that an inspection is necessary to:

(1) prevent a violation of this chapter;

(2) protect a consumer or another license holder; or

(3) assist another state or federal agency in an investigation.

(b) The director may request or issue a subpoena for the license holder's records.

(c) If the director determines that it is appropriate to detect and address suspected violations of this chapter, the department may carry out an undercover investigation in accordance with board-adopted rules.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. CRIMINAL PENALTY FOR PERFORMING ACTION WITHOUT PROPER LICENSE. (a) A person who is not required to hold a license under this chapter commits an offense if the person performs an act that requires a license under this chapter.

(b) An offense under this section is a Class B misdemeanor. A subsequent conviction for an offense under this section is punishable as a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the director has reasonable cause to believe that a person licensed under this chapter has or intends to violate a provision of this chapter or the rules adopted under this chapter, to enforce compliance with this chapter the director may issue to the license holder without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both.

(b) The director may issue an order to a license holder to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to the violation if the license holder in any way is performing an action that relates to the sale, financing, or installation of a manufactured home or relates to providing goods or services in connection with the sale, financing, or installation of a manufactured home, provided that if the matter involves a law that is subject to administration or interpretation by a state agency other than the department, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing the order. The director may not issue an order under this subsection with respect to a matter that is subject to inspection and regulation by a state

agency other than the department.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is issued requests a hearing, the director shall set and give notice of a hearing. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 30th day after the date on which an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided under law, the director, after the expiration of the 10-day period following the date the director provides notice to the person, may, without a prior hearing, suspend the person's license. The suspension continues until the person has complied with the cease

and desist order or paid the administrative penalty. During the period of suspension:

(1) the person whose license has been suspended may not perform an act that requires a license under this chapter; and

(2) all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom the compensation was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) must be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided notice of the time and place of the hearing not later than the third day before the hearing is scheduled to occur.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may prohibit the person from being a related person of a license holder unless the person obtains the prior written consent of the director.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions.

(b) If the person charged with a violation accepts the director's determination with respect to an administrative penalty, the director shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(c) Not later than the 30th day after the date on which the director's determination becomes final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the facts of the violation, the amount of the penalty, or both the facts of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the director's order assessing the penalty is subject to the substantial evidence rule.

(g) If, after judicial review, the penalty is reduced or not assessed, the director as applicable shall remit to the person charged the appropriate amount, including accrued interest if the penalty has been paid, or shall execute a release of any supersedeas bond that was posted. The accrued interest on amounts remitted by

the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the division director, may institute an action for injunctive relief to restrain the person from continuing the violation and for a civil penalty of not more than $1,000 for each violation and of not more than $250,000 in the aggregate. A civil action filed under this subsection must be filed in a district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 81. Section 2306.0724, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A housing sponsor who fails to file a report in a timely

manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Subsection (e) [~~Section 2306.6023~~].

(e) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 82. Section 2306.186, Government Code, is amended by amending Subsection (k) and adding Subsection (m) to read as follows:

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Subsection (m) [~~Section 2306.6023~~]. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(m) In determining the amount of an administrative penalty

assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 83. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its Internet website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and provide a hard copy of that information to those persons on request by those persons.

SECTION 84. Section 11.432, Tax Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by:

(1) a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) [~~or be accompanied by~~] a verified copy of the

purchase contract showing that the applicant is the purchaser of the manufactured home;

(3) a photostatic copy of the current title page for the manufactured home as that page is displayed on the Internet website of the Texas Department of Housing and Community Affairs; or

(4) the applicable computer records of the Texas Department of Housing and Community Affairs.

(b-1) The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether:

(1) an owner has elected to treat the manufactured home as real property or personal property; or

(2) the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 85. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home, the collector shall enter into a contract under this section with a property owner who:

(1) owns the manufactured home; and

(2) requests the establishment of the escrow account.

SECTION 86. Section 32.03, Tax Code, is amended by amending Subsections (a-1), (a-2), and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than the expiration of the six-month period following the end of the calendar year for which the tax was owed. The tax lien may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against the owner of a new manufactured home who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer title of a manufactured home until all tax liens perfected on the home have been filed in a timely manner with the Texas Department of Housing and Community Affairs and until all personal property taxes on the manufactured home that accrued on each January 1 within 18 months of the date of the sale are extinguished or satisfied and released. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community

Affairs. In this section, "manufactured home" has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed in a timely manner with the Texas Department of Housing and Community Affairs, a taxing unit or an agent of the taxing unit may not use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax lien.

(b-1) A taxpayer is entitled to designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(b-2) Notwithstanding any other provision of law, if a manufactured home was omitted from the tax roll at any time before the second anniversary of the date on which taxes are due, the taxing unit may file a tax lien not later than the 150th day after the date on which the tax becomes delinquent.

(b-3) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. To enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the

taxes are levied, the tax collector shall apply the escrowed amounts to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may increase once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 87. The following provisions are repealed:

(1) Section 1201.054(c), Occupations Code;

(2) Section 1201.059, Occupations Code;

(3) Section 1201.112, Occupations Code;

(4) Section 1201.163, Occupations Code;

(5) Sections 1201.214(c) and (d), Occupations Code;

(6) Section 1201.408, Occupations Code; and

(7) Section 2306.6023, Government Code.

SECTION 88. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 89. This Act takes effect September 1, 2007.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 27, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1460 by Haggerty (relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 1st House, Substituted: a negative impact of ($2,051,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($1,056,388)
2009	($994,975)
2010	($994,975)
2011	($994,975)
2012	($994,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926	Change in Number of State Employees from FY 2007
2008	($918,000)	($138,388)	$918,000	1.5
2009	($918,000)	($76,975)	$918,000	1.0
2010	($918,000)	($76,975)	$918,000	1.0
2011	($918,000)	($76,975)	$918,000	1.0
2012	($918,000)	($76,975)	$918,000	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the purposes of the fund. Administrative penalties and $10 of each statement of ownership and location fee would be deposited to the credit of the fund. The executive director of the Texas Department of Housing and Community Affairs (TDHCA) would administer the fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the specific purposes of the fund. Administrative penalties—estimated to be $18,000 annually—now dedicated to the General Revenue Fund 0001 would be dedicated to the trust fund. In addition, $10 of each $55 fee collected for a statement of ownership and location and currently deposited to Fund 0001 would be deposited to the trust fund. TDHCA estimates that 90,000 statements are sold each fiscal year. The table above reflects

the Comptroller's estimate of revenue loss to General Revenue and subsequent gain to the Trust Fund.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 20, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, and regulation of manufactured housing.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Introduced: a negative impact of ($1,568,720) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($792,080)
2009	($776,640)
2010	($776,640)
2011	($776,640)
2012	($776,640)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *APPROPRIATED RECEIPTS* 666	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926
2008	($600,000)	($192,080)	($905,000)	$600,000
2009	($600,000)	($176,640)	($897,200)	$600,000
2010	($600,000)	($176,640)	($897,200)	$600,000
2011	($600,000)	($176,640)	($897,200)	$600,000
2012	($600,000)	($176,640)	($897,200)	$600,000

Fiscal Year	Change in Number of State Employees from FY 2007
2008	5.0
2009	5.0
2010	5.0
2011	5.0
2012	5.0

Fiscal Analysis

The bill would amend the Tax Code, the Occupations Code, and the Finance Code, relating to the

taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption would be claimed on a personal property manufactured home and that a taxing authority would rely on the computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. The bill would note the requirements necessary for a tax assessor-collector to enter into a contract to establish an escrow account with a property owner for the payment of property taxes.

The bill would establish that a valid tax lien filed timely with TDHCA would be deemed notice of a lien, require the payment of personal property taxes accrued on each January 1 within 18 months of the date of sale in order to transfer title, place limits on the use of tax warrants in foreclosure, and give taxpayers the right to designate payments to a tax year.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow, apply payments when due, and notify a new owner of any liability that might be due. The bill would allow a prospective buyer (when seeking certification from a tax assessor-collector that taxes have been paid) to pay two years back taxes if a home had been omitted from the tax rolls by mistake.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. In addition, the bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000).

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as the Manufactured Homeowner's Recovery Fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 45 days. Failing to meet the deadline, if repeatedly violated, would lead to the revocation or suspension of a license and allow the board to assess administrative penalties ranging from $1,000 for a first violation to $4,000 for each subsequent violation. Persons not licensed or failing to take required actions would face an administrative penalty not to exceed $10,000, plus other reasonable fees and expenses. Persons operating without a license would commit an offense punishable as a class A or B misdemeanor and would be liable for damages. Violations would be subject to an administrative penalty not to exceed $1,000 per day for each violation. Penalties would be deposited to the credit of the fund.

The bill would amend Chapter 347 of the Finance Code, relating to the rights and responsibilities of an owner of a security interest in a home and the precedence of liens on a home.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

Methodology

The bill would broaden the definition of a manufactured home to include homes smaller in size than "HUD-code" manufactured homes, sometimes referred to as "park models." Because there are no data on the number of these homes in existence, the fiscal impact of this provision cannot be estimated.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption may be claimed on a personal property manufactured home and that a taxing authority would rely on the

computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. This language would not change current law regarding the eligibility of mobile homes for homestead exemptions, and it would not create a significant cost to local governments or to the state.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000). There would be no fiscal impact to the state for this change.

The bill would authorize administrative penalties ranging from $1,000 to $10,000, plus other reasonable fees and expenses for violations.

The administrative cost estimate to the Comptroller's Office reflects the costs associated with the handling of complaints, administrative hearings, and mandates, which would require two hearings examiners with associated administrative costs. This cost is expected to be $240,840 per year and require 2 full time employees for each year. This cost is not reflected in the above table.

The administrative cost estimate to TDHCA reflects costs related to disciosing the name and address of the person obligated on the taxes and amount of each lien on a tax lien recording. The bill would also require TDHCA to provisionally record a lien on a record that reflects a taxpayer name that is different from the name of the owner and requires TDHCA to notify the appraisal district of the disparity and allow the taxing authority to resubmit an amended tax lien reflecting the name of the owner of the home within 60 days of notification. The cost is expected to be $905,000 in fiscal year 2008 and $897,200 per year beginning in fiscal year 2009 and require 3 full time employees for each year.

The bill would create the General Revenue-Dedicated - Homeowners' Recovery Fund and terminate the Manufactured Homeowners' Recovery Trust Fund in the General Revenue Fund. This fund would generate approximately $900,000 each year in fees and TDHCA anticipates that approximately $300,000 each year will be expended for carrying out the specific purposes of the fund.

The Office of the Attorney General (OAG) reports that the Manufactured Housing Division of the Texas Department of Housing and Community Affairs currently has no staff attorneys. The Department relies on the OAG's Administrative Law Division (ALD) for all general counsel work, enforcement work, and administrative law litigation.

Greater need for enforcement in this industry has been identified as a problem affecting the rights of consumers. Sec. 18, subsection (g) creates new enforcement authority for the Department that will require action by ALD. Sec. 32 creates additional new due process hearings and suits for injunctive relief and civil penalties--the ALD estimates that this will have significant impact in order to accomplish the goal of greater enforcement. As a result, the OAG would require 1 attorney in each fiscal year 2008-2012.

It is estimated that one FTE attorney will also be required to assist the Department in analyzing and implementing this bill, based on the complexity of the issues--taxing, lien recordation, and enforcement, and based on historic use of general counsel services for this purpose by the Department.

The OAG's Administrative Law Division would require, in each fiscal year 2008 -2012, one Assistant Attorney General II (AAG) to handle enforcement work and one AAG IV to handle general counsel work associated with passage of the bill. The cost in fiscal year 2008 is $192,080 and $176,640 in each fiscal year thereafter. The OAG will require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

There would be a technology cost to the Department of Housing and Community Affairs of $7,800 in fiscal year 2008 and $4,800 in fiscal year 2013. There would also be a one-time technology impact to the Office of the Attorney General of $2,787 in fiscal year 2008 for network stations and software.

Local Government Impact

Costs to local tax collectors would depend on the number of instances in which personal property taxes have not been levied by the taxing unit and there is a prospective buyer of the manufactured home. Most of these costs would be for letterhead, postage, and personnel time to collaborate with TDHCA and new owners to clear up any outstanding tax or escrow issues.

In addition, the bill could have a negative fiscal effect on local taxing authorities by deleting liens not matching TDHCA records. Without a lien on file, a taxing authority would see a loss of tax collection revenue.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, JM, AH, SJS, KJG

By: Haggerty (Senate Sponsor - Harris) H.B. No. 1460

(In the Senate - Received from the House April 27, 2007; May 1, 2007, read first time and referred to Committee on Business and Commerce; May 15, 2007, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; May 15, 2007, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 1460 By: Harris

A BILL TO BE ENTITLED
AN ACT

relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended to read as follows:

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) [~~(2-a)~~] "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) [~~(3)~~] "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) [~~(4)~~] "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured homes.

(7) [~~(5)~~] "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(8) [~~(6)~~] "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(9) "Control" means, with respect to another person, the possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(10) [~~(7)~~] "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) [~~(8)~~] "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) [~~(9)~~] "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) [~~(10)~~] "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) [~~(11)~~] "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) [~~(12)~~] "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(16) [~~(13)~~] "Lease-purchase" means entering into a lease contract for a manufactured home, in which the lessor retains title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.

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

(18) [~~(15)~~] "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) [~~(16)~~] "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(20) [~~(17)~~] "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(22) [~~(18)~~] "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who directly or indirectly participates in management or policy decisions.

(24) [~~(19)~~] "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) [~~(20)~~] "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(27) [~~(21)~~] "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) [~~(22)~~] "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) [~~(23)~~] "Standards code" means the Texas Manufactured Housing Standards Code.

(30) [~~(23-a)~~] "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) [~~(24)~~] "Trust fund" means the manufactured homeowners' recovery trust fund.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership and location; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

SECTION 3. Subsection (a), Section 1201.053, Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~]

and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Section 1201.054, Occupations Code, is amended to read as follows:

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, 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, Government Code, shall apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(c) [~~A rule as finally adopted must be published in the Texas Register and state the rule's effective date.~~

[~~(d)~~] A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier [~~later~~] than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.055, Occupations Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 6. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees [~~the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter~~].

SECTION 7. Section 1201.101, Occupations Code, is amended by amending Subsections (d), (f), and (g) and adding Subsection (f-1) to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A

retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may 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.

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person exempt from licensing [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 8. Subsections (a), (b), and (c), Section 1201.102, Occupations Code, are amended to read as follows:

(a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license~~].

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems [~~Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor~~].

(c) An individual who [~~In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or broker's license or who is a related person of such a licensee[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 9. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must 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 [~~the~~] trade names, and the names of all other business organizations, under [~~name by~~] which the applicant does business subject to this chapter [~~and, if incorporated~~], the name of each such business organization registered with the secretary of state, and the address of such [~~the~~] business organization; [~~and~~]

(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.

(a-1) All required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such

other location within this state as the licensee may designate.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 10. Sections 1201.104 and 1201.105, Occupations Code, are amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must have at least one related person who meets this requirement [~~The director may not issue a license to that person until the course of instruction is completed~~].

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval. Classes must be live. Online or other electronic classes are not permitted.

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

(g) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(h) [~~(f)~~] An examination must [~~may not~~] be a requirement of successful completion of any initial required course of instruction under this section [~~made a prerequisite of licensing~~].

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable

to the trust fund.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each retailer's branch location;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a licensee or a business entity under which [~~corporation that is~~] a license holder conducts business; or

(2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption [~~The director may require a proper endorsement of the original bond~~].

SECTION 13. Subsections (a), (b), and (c), Section 1201.113, Occupations Code, are amended to read as follows:

(a) The board shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for licensees [~~salespersons regulated~~] under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Attendance at an approved or administered continuing education course described by Subsection (a) is a prerequisite to renewal of a license [~~A person who holds a salesperson's license must participate in certification and continuing education programs as provided by Subsection (c)~~].

(c) No test shall be given in relation to any continuing education program [~~To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution~~].

SECTION 14. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION; PROBATIONARY LICENSE. (a) Any license under this chapter other than a probationary [~~A manufacturer's, retailer's, broker's, or installer's~~] license is valid for [~~one year. A salesperson's license is valid for~~] two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

(b) If the director determines that a licensed salesperson or installer should receive a probationary license, the director may issue a probationary license on such terms and for such period as are deemed reasonable. The issuance of a license on a probationary basis, any one or more of the specific terms of the probation, or the period of probation may be appealed before the 31st day after issuance of the probationary license by written notice to the director. If appeal is made, the director shall set the matter for a hearing before the State Office of Administrative Hearings, and all administrative proceedings relating to the issuance of the probationary license shall be deemed to be a contested case under Chapter 2001, Government Code. If no appeal is made, the probationary license shall be issued and shall remain in effect in accordance with the terms specified [~~The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable~~].

SECTION 15. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall 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 16. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 17. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 18. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) A deposit becomes a down payment upon execution of a

binding written agreement. Thereafter, if the consumer exercises a right of rescission, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, without offset or deduction.

SECTION 19. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

(b) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 226.

SECTION 20. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 21. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by Section 1201.456, a [~~A~~] broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

SECTION 22. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) Unless the information provided for in Subsection (c) is provided electronically, the [~~The~~] department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

(e) The copies and lists to be provided under this section may be provided electronically.

SECTION 23. Section 1201.162, Occupations Code, is amended to read as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) 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, the retailer [~~or agent~~] must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must 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 purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured

home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~

[~~(d)~~] A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement

underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer.

[~~(c)~~] Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

SECTION 24. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for in Subsection (b), the [~~The~~] consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) The consumer may modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

SECTION 25. Sections 1201.203, 1201.204, and 1201.205, Occupations Code, are amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership [~~and location at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect a lienholder recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director [~~or on another document~~], the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien [~~the manufacturer's certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must [~~may~~] submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or consented to by the consumer.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be evidenced by a board-approved form issued by the department setting forth [~~provide~~]:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where [~~county of this state in which~~] the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs -

Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year." [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the board [~~director~~] requires.

SECTION 26. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the form of application for statement and ownership and location promulgated by the board [~~made by affidavit~~].

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, obtain a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a real property election has complied with the requirements of this subsection.

SECTION 27. Sections 1201.206, 1201.207, 1201.2075, 1201.2076, and 1201.208, Occupations Code, are amended to read as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) [~~(b)~~] At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement

of ownership and location.

(b) [~~(c)~~] Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) [~~(d)~~] Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(d) If the seller accepts a trade-in manufactured home as part of the consideration for the sale of another manufactured home, the seller shall file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the trade-in manufactured home from the prospective buyer to the seller. The seller shall file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home that was sold by the seller. If the seller is a retailer, the seller shall indicate on the application for the issuance of the new statement of ownership and location whether the trade-in manufactured home has been added to the inventory of the retailer.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) When the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory, the seller shall also file with the department a statement from the tax assessor-collector that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the sale.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least $100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership and location the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP TO ONE HUNDRED DOLLARS ($100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) When a properly completed notice of installation on the department's promulgated form is filed that relates to a secondary move, the notice must be accompanied by either:

(1) one true and correct copy of the original notice of installation; or

(2) a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser for the county in which the home was installed; the delivery of the copy

of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

(i-1) If the method specified in Subsection (i)(2) is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(j) In addition to providing each chief appraiser the monthly report required by Section 1201.220, the department shall, on request, provide tax collector one copy of any requested reported notice of installation.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable supporting proof as the director may require.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership and location until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the issuance in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the owner and each [~~of the home and to any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative or a court order.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the

retailer.

(e) Notwithstanding any other provision of this chapter, if the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the amount deducted from the security for the license [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 28. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Until a revocation or suspension has become final, the department shall place a hold on any activity relating to the statement of ownership and location other than the recordation of

liens, including tax liens.

SECTION 29. Subsection (b), Section 1201.214, Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a [~~certified~~] copy of the statement of ownership and location issued under this subsection.

SECTION 30. Subsection (a), Section 1201.216, Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or of recordation of liens, including tax liens.

SECTION 31. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located. The notice must include the address where the home is currently located. If the person giving such notice knows that the person to whom the notice is being given no longer resides and is no longer receiving mail at such address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, [~~or~~] a lienholder, or a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, or tax assessor-collector seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

SECTION 32. Sections 1201.219 and 1201.220, Occupations Code, are amended to read as follows:

Sec. 1201.219. PERFECTION AND EFFECT OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien [~~under the~~

~~terms of the security agreement~~].

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

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien security agreement [~~by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home reported as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 33. The heading to Section 1201.251, Occupations Code, is amended to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD [~~DIRECTOR~~].

SECTION 34. Section 1201.251, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) The board [~~director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed

engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

SECTION 35. Subsection (a), Section 1201.252, Occupations Code, is amended to read as follows:

(a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board [~~director~~] unless, after a hearing, the board expressly approves the proposed standard.

SECTION 36. Sections 1201.253, 1201.254, and 1201.255, Occupations Code, are amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board [~~director~~] must state its effective date [~~as provided by Section 1201.054~~].

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose.

(b) An installer may not install a 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 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 [~~director~~].

SECTION 37. Subsection (b), Section 1201.301, Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee [~~manufacturing facility~~].

SECTION 38. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 39. Subsections (a) and (b), Section 1201.302, Occupations Code, are amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

(b) On request, the department shall 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 the board [~~director~~]. The department may withdraw the authorization if the local governmental unit fails to follow the

rules, interpretations, and written instructions of the department.

SECTION 40. Subsections (a) and (b), Section 1201.351, Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

SECTION 41. Sections 1201.352 through 1201.355, Occupations Code, are amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, [~~or~~] retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer, [~~or~~] retailer, or installer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

SECTION 42. Subsections (a), (b), and (c), Section 1201.356, Occupations Code, are amended to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, [~~and~~] retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by [~~either~~] the manufacturer's, [~~or~~] retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, [~~or~~] retailer, or installer an appropriate order for corrective action by the manufacturer, [~~or~~] retailer, or installer specifying a reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

SECTION 43. Sections 1201.357 and 1201.358, Occupations Code, are amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within a [~~the~~] period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why

the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Failure by the manufacturer, [~~or~~] retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If the director determines that the order was incorrect regarding that obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other~~].

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer, [~~or~~] retailer, or installer performing the obligation the right of indemnification against another party [~~the other~~].

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 44. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all [~~secondary~~] installations [~~not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a

new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of [~~the~~] installation.

SECTION 45. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

SECTION 46. Subsection (a), Section 1201.402, Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 47. Subsection (b), Section 1201.404, Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

SECTION 48. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment.

(g) The board by rule may 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. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

SECTION 49. Sections 1201.406 and 1201.407, Occupations Code, are amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written,

sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes the director determines to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow [~~provide~~] a license holder 10 days [~~an opportunity~~] to comment on this [~~the~~] preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government Code.

(f) Any [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(c) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the~~] license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 50. Subsections (a) and (b), Section 1201.409, Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be

made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 51. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. INFORMATION ON RECOVERY FROM TRUST FUND [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for notifying [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund, shall post the information on the department's website, and shall make printed copies available on request.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 52. Subsection (b), Section 1201.451, Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

SECTION 53. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 54. Subsection (b), Section 1201.457, Occupations Code, is amended to read as follows:

(b) If a used manufactured home is reserved for business use or salvaged, a person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue a new [~~the~~] statement of ownership and location.

SECTION 55. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a [~~the~~] home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector [~~collector~~] may[~~:~~

[~~(1)~~] apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home[~~;~~

[~~(2) pay the applicable fee; and~~

[~~(3) recover that fee as part of the cost of the sale~~

~~of the home~~].

(c) A [~~The~~] seal issued to a tax appraiser or [~~the~~] tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 56. The heading to Section 1201.461, Occupations Code, is amended to read as follows:

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

SECTION 57. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

SECTION 58. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

SECTION 59. Subsection (a), Section 1201.506, Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 60. Subchapter K, Chapter 1201, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit 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 the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 61. Sections 1201.551, 1201.552, and 1201.553, Occupations Code, are amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed [~~timely provide to a consumer an~~] application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had another license issued by this state revoked or suspended.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

Sec. 1201.552. [~~HEARING CONCERNING~~] LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any [~~an~~] order, decision, or determination of the board [~~director~~] is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 62. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a licensee [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

SECTION 63. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the 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 the department under this chapter, the director may 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.

(b) The director may issue an order to any 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 director shall consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is based. If a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued, the director shall set and give notice of a hearing. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has occurred or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. 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.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the

department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the order of the director assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County.

(g) If, after judicial review, the penalty is reduced or not assessed, the director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 64. Subsection (b), Section 2306.6022, Government Code, is amended to read as follows:

(b) The division shall make available on its website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

SECTION 65. Section 94.051, Property Code, is amended to read as follows:

Sec. 94.051. INFORMATION TO BE PROVIDED TO PROSPECTIVE TENANT. At the time the landlord receives an application from a prospective tenant, the landlord shall give the tenant a copy of:

(1) the proposed lease agreement for the manufactured home community;

(2) any manufactured home community rules; and

(3) a separate disclosure statement with the following prominently printed in at least 10-point type:

"You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, [~~if the recreational vehicle is tied to, affixed, or otherwise a permanent part of the premises,~~] the landlord must give

you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice [~~if the landlord will not renew your lease and will require that you relocate your manufactured home or recreational vehicle~~]. During the applicable [~~60-day~~] period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal."

SECTION 66. Section 94.052(b), Property Code, is amended to read as follows:

(b) Except as provided by Section 94.204, regardless [~~Regardless~~] of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the date of the expiration of the lease if the landlord chooses [~~does~~] not to renew the lease. During the applicable [~~60-day~~] period, the tenant must pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

SECTION 67. Section 94.053(c), Property Code, is amended to read as follows:

(c) A lease agreement must contain the following information:

(1) the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;

(2) the lease term;

(3) the rental amount;

(4) the interval at which rent must be paid and the date on which periodic rental payments are due;

(5) any late charge or fee or charge for any service or facility;

(6) the amount of any security deposit;

(7) a description of the landlord's maintenance responsibilities;

(8) the telephone number of the person who may be contacted for emergency maintenance;

(9) the name and address of the person designated to accept official notices for the landlord;

(10) the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;

(11) the grounds for eviction as provided by Subchapter E;

(12) a disclosure of the landlord's right to choose not to renew [~~terminate~~] the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;

(13) a disclosure of any incorporation by reference of an addendum relating to submetering of utility services;

(14) a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law;

(15) if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and

(16) any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

SECTION 68. The heading to Section 94.204, Property Code, is amended to read as follows:

Sec. 94.204. NONRENEWAL OF LEASE [~~TERMINATION~~] FOR CHANGE IN LAND USE.

SECTION 69. Section 94.204(a), Property Code, is amended to read as follows:

(a) A landlord may choose not to renew [~~terminate~~] a lease agreement to change the manufactured home community's land use only if not later than the 180th day before the date the land use will change:

(1) [~~not later than the 120th day before the date the land use changes,~~] the landlord sends notice to the tenant, to the owner of the manufactured home if the owner is not the tenant, and to the holder of any lien on the manufactured home:

(A) specifying the date that the land use will change; and

(B) informing the tenant, owner, and lienholder, if any, that the owner must relocate the manufactured home; and

(2) [~~not later than the 120th day before the date the land use changes,~~] the landlord posts in a conspicuous place in the manufactured home community a notice stating that the land use will change and specifying the date that the land use will change.

SECTION 70. Subsections (a) and (b), Section 11.432, Tax Code, are amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 [~~of this code~~], the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, 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 for the home is displayed on the computer website of the Texas Department of Housing and Community Affairs. The appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to determine whether a manufactured home qualifies for an exemption.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08. The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether the owner has elected to treat the home as real property or personal property and regardless of whether the home is listed on the tax rolls with the real property to which it is attached or separately.

SECTION 71. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

SECTION 72. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer ownership [~~title~~] of a manufactured home until all tax liens perfected on the home that

have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a [~~the~~] manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 73. (a) The following provisions of the Occupations Code are repealed:

(1) Section 1201.059;

(2) Section 1201.112;

(3) Subsections (c), (d), (e), (f), and (g), Section 1201.113;

(4) Section 1201.163;

(5) Subsections (c) and (d), Section 1201.214; and

(6) Section 1201.408.

(b) Section 2306.6023, Government Code, is repealed.

SECTION 74. The changes in law made by this Act to Sections 94.051, 94.052, 94.053, and 94.204, Property Code, apply only to a lease agreement or a renewal to a lease agreement entered into after the effective date of this Act. A lease agreement or a renewal to a lease agreement entered into on or before the effective date of this Act is covered by the law in effect at the time the lease agreement or the renewal to the lease agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 75. The change in law made by this Act applies only to the sale, exchange, or lease-purchase of a new or used manufactured home on or after the effective date of this Act. A sale, exchange, or lease-purchase of a new or used manufactured home before the effective date of this Act is governed by the law in effect on the date of the sale, exchange, or lease-purchase, and the former law is continued in effect for that purpose.

SECTION 76. Except as otherwise provided by this Act, the

changes in law made by this Act apply only to a license issued or renewed by the Texas Department of Housing and Community Affairs on or after January 1, 2008. An issuance or renewal that occurs before January 1, 2008, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 77. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 78. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 79. This Act takes effect January 1, 2008.

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR SJR SR (HB) HCR HJR 1460

By Haggerty/Harris
(Author/Senate Sponsor)

5/15/07
(date)

We, your Committee on BUSINESS AND COMMERCE, to which was referred the attached measure, have on 5/10/07 (date of hearing), had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

(✓) do pass as substituted, and be printed
( ) the caption remained the same as original measure
(✓) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

(✓) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (✓) yes ( ) no

A revised fiscal note was requested. (✓) yes ( ) no

Considered by subcommittee. ( ) yes (✓) no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Troy Fraser, Chairman	✓			
Senator Chris Harris, Vice-Chairman	✓			
Senator Kip Averitt			✓	
Senator Kevin Eltife			✓	
Senator Craig Estes	✓			
Senator Kyle Janek	✓			
Senator Eddie Lucio	✓			
Senator Leticia Van de Putte	✓			
Senator Kirk Watson	✓			
TOTAL VOTES	7		2	

COMMITTEE ACTION

(S260) Considered in public hearing
S270 Testimony taken

Kathy Reagan
COMMITTEE CLERK

CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

HB 1460

Senate Committee Report

Business & Commerce

May 10, 2007 - 9:00 AM

Registering, but not testifying:

For:

Anderson, Jody (Self; Texas Manufactured Housing Association), Lufkin, TX

Glenn, Eric (Texas Manufactured Housing Association), Austin, TX

Krause, Sherman (Tax Assessor-Collector's Association of Texas), Lufkin, TX

Pendleton, D. J. (Texas Manufactured Housing Association), Austin, TX

Young, Chris (Linebarger Goggan Blair and Sampson, LLP), Austin, TX

On:

Irvine, Tim (Texas Department of Housing and Community Affairs, Manufactured Housing Division), Austin, TX

BILL ANALYSIS

Senate Research Center
80R20084 E

C.S.H.B. 1460
By: Haggerty (Harris)
Business & Commerce
5/15/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Manufactured Housing Act was originally created by the legislature in the mid-1970s and codified into the Occupations Code in 2003. During this time, the industry has experienced significant change along with amendments to both the Texas code and the preemptive Federal Manufactured Housing Standards Act.

C.S.H.B. 1460 proposes several changes to Chapter 1201 (Manufactured Housing), Occupations Code. The proposed amendments will provide greater consumer protections through increased enforcement authority granted to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA). In particular, this bill provides more stringent procedures required to transfer ownership and clarifying responsibilities of businesses licensed by TDHCA. The bill also further clarifies how property taxes are to be recorded and may be collected with respect to manufactured homes that are designated as personal property. This bill provides many nonsubstantive changes made to clarify regulatory agency and licensee practices concerning licensing, installations, consumer disclosures, and disciplinary procedures.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Manufactured Housing Board within the Texas Department of Housing and Community Affairs in SECTION 10 (Section 1201.104, Occupations Code), SECTION 15 (Section 1201.118, Occupations Code), SECTION 19 (Section 1201.1521, Occupations Code), SECTION 48 (Section 1201.405, Occupations Code), and SECTION 63 (Section 1201.611, Occupations Code) of this bill.

Rulemaking authority previously granted to the Manufactured Housing Board within the Texas Department of Housing and Community Affairs is modified in SECTION 4 (Section 1201.054, Occupations Code) and SECTION 34 (Section 1201.251, Occupations Code) of this bill.

Rulemaking authority previously granted to the executive director of the manufactured housing division within the Texas Department of Housing and Community Affairs is transferred to the Manufactured Housing Board within the Texas Department of Housing and Community Affairs in SECTION 3 (Section 1201.053, Occupations Code) and SECTION 25 (Section 1201.203, Occupations Code) of this bill.

Rulemaking authority previously granted to the Manufactured Housing Board within the Texas Department of Housing and Community Affairs is rescinded in SECTION 14 (Section 1201.114, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 26 (Section 1201.2055, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1201.003, Occupations Code, as follows:

> Sec. 1201.003. DEFINITIONS. Defines "affiliate," "control," "licensee," "new manufactured home," "related person," "rules," and "used manufactured home." Redefines "business use," "lease-purchase," "salesperson," and "statement of ownership and location." Makes no changes to definitions for "advertisement," "alteration," "attached," "board," "broker," "consumer," "department," "director," "HUD-code

manufactured home," "installation," "installer," "label," "license holder," "manufactured home," "manufacturer," "mobile home," "person," "retailer," "salvaged manufactured home," "seal," "standards code," and "trust fund."

SECTION 2. Amends Section 1201.008, Occupations Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes the owner of a manufactured home to remove the home from its location in the event that the home occupies a lot in a municipality and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and at least as large in living space as the prior manufactured home, notwithstanding a zoning law or any other law, unless prohibited by an ordinance or charter of a home-rule or general law municipality.

(f) Provides that an owner's ability to replace the home as a result of a fire or natural disaster cannot be restricted. Authorizes a general-rule or home-rule municipality by an ordinance or charter to limit the ability of the owner to replace his or her home to a single replacement, other than in the case of a fire or natural disaster.

SECTION 3. Amends Section 1201.053(a), Occupations Code, to require the Manufactured Housing Board within the Texas Department of Housing and Community Affairs (board), rather than the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs (director), to adopt rules, rather than to issue orders, and otherwise act as necessary to comply with certain standards and implement specific procedures.

SECTION 4. Amends Sections 1201.054, Occupations Code, as follows:

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Makes no changes to this subsection.

(b) Requires the board, if requested, to hold a hearing, after at least 10 days' notice, on any rule that it proposes to adopt, other than a rule proposed for adoption under emergency rulemaking, in which case only the requirements of Chapter 2001 (Administrative Procedure), Government Code, apply. Deletes existing text requiring a proposed rule to be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Deletes existing Subsection (b) requiring notice of the time and place of the public hearing to be published in the Texas Register before the 30th day preceding the date of the hearing. Deletes existing Subsection (c) requiring a rule as finally adopted to be published in the Texas Register and state the rule's effective date.

(c) Prohibits a rule relating to installation standards from taking effect earlier, rather than later, than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Amends Section 1201.055, Occupations Code, by adding Subsection (c-1), to authorize the Texas Department of Housing and Community Affairs operating through its manufactured housing division (TDHCA) to permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 6. Amends Section 1201.058, Occupations Code, as follows:

Sec. 1201.058. AMOUNT OF FEES. (a) Creates this subsection from existing text. Requires the board to establish reasonable fees for all matters under this chapter providing for fees. Authorizes TDHCA to charge a discounted fee for the electronic filing, if TDHCA's rules provide an option to do so.

(b) Requires $10 of the fee for each purchase, exchange, or lease-purchase of a manufactured home to be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I (Manufactured Homeowners' Recovery Trust Fund).

(c) Provides that all fees imposed by this chapter (Manufactured Housing) or the rules are deemed to be earned and not subject to refund after receipt by TDHCA.

(d) Authorizes the director, in limited and appropriate circumstances and in accordance with rules adopted by the board, to approve the refund of fees, notwithstanding Subsection (c). Deletes existing text requiring the board to establish the fees imposed under Sections 1201.055 through 1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter.

SECTION 7. Amends Sections 1201.101(d), (f), and (g) and adding Subsection (f-1), Occupations Code, as follows:

(d) Prohibits a person from acting as an installer, rather than performing an installation function on manufactured housing, in this state unless the person holds an installer's license.

(f) Prohibits a licensed salesperson from participating in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) Authorizes a retailer to be licensed to operate at a principal location and one or more branch locations under a single license, but requires a separate application to be made for each branch and requires each branch to be separately bonded.

(g) Provides that this subsection does not apply to a person exempt from licensingwho is not required to hold a license as described by Section 1201.102 or an advertisement concerning real property on which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055, rather than a manufactured home that has been permanently attached. Deletes existing text providing that this subsection does not apply to a person to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period.

SECTION 8. Amends Sections 1201.102(a), (b), and (c), Occupations Code, as follows:

(a) Authorizes a licensed installer to employ an unlicensed person to assist the installer in performing installation functions if the licensed installer maintains a list of all unlicensed persons employed. Authorizes the director to issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer. Deletes existing text providing that an employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold on individual license.

(b) Authorizes a licensee to engage another person who is not licensed under this chapter but possesses another license issued by this state to provide goods and services subject to that other license. Provides that, without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems. Deletes existing text prohibiting an independent contractor or business entity from operating under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor, except as provided by Section 1201.510.

(c) Provides that an individual who holds a retailer's license or a broker's license or who is a related person of such a license holder is not required to apply for a salesperson's license. Deletes existing text providing that, in the case of a sole proprietorship,

partnership, or corporation that holds a retailer's or broker's license, an owner, partner, or officer of that entity is not required to apply for a salesperson's license if that owner, partner, or officer is properly listed in the retailer's or broker's license application.

SECTION 9. Amends Section 1201.103, Occupations Code, by amending Subsections (a) and (d) and adding Subsection (a-1), as follows:

(a) Requires certain license applicants to file a license application with the director containing, among other things, the legal name, address, and telephone number of the applicant and each person who will be a related person at the time the license is issued, all trade names and the names of all other business organizations under which the applicant does business subject to this chapter and the address of such business organization, and the location to which the license will apply. Deletes existing text requiring the application to contain the name of the business registered with the secretary of state if incorporated.

(a-1) Provides that all required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(d) Requires an applicant for a salesperson's license to file an application with the director that is sponsored by a currently licensed retailer or broker, rather than a licensed, bonded retailer.

SECTION 10. Amends Sections 1201.104 and 1201.105, Occupations Code, as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Requires a person, as a requirement, rather than a prerequisite, for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, who was not licensed or registered with TDHCA or a predecessor agency on September 1, 1987, not more than 12 months before applying for the person's first license under this chapter, to attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations, except as provided by Subsection (e). Requires the applicant to employ at least one related person who meets the requirement described by this subsection if the applicant is not an individual. Deletes existing text prohibiting the director from issuing a license to that person until the course of instruction is completed.

(b) Provides that successful completion of the course of instruction is a prerequisite to obtaining the license, except in the case of an applicant for a salesperson's license.

(c) Authorizes an applicant for a salesperson's license to apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. Provides that the person's license is automatically suspended until the person successfully completes the course if the person fails to complete such a course successfully and in a timely manner.

(d) Creates this subsection from existing Subsection (b).

(e) Requires the board to adopt rules relating to course content and approval. Requires classes to be live. Provides that online or other electronic classes are not permitted.

(f) Requires an applicant for an initial installer's license to receive a license on a probationary basis. Requires the person's probationary status to remain in effect until such time as the sufficient number of installations completed by the person have been inspected by TDHCA and found not to have any identified material violations of TDHCA rules. Requires the board, with the advice of the advisory committees to be established under Section 1201.251, to adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) Deletes existing text providing that Subsection (a) does not apply to a registration holder who applies for a salesperson's license.

(h) Requires successful passage of an examination to be a requirement for the successful completion of an initial required course of instruction required under this section, but prohibits successful passage of an examination from being a prerequisite for continuing education courses. Deletes existing text prohibiting an examination from being made a prerequisite of licensing. Deletes existing Subsection (c) providing alternatives to the course of instruction. Deletes existing Subsection (d) requiring a manufacturer to reimburse TDHCA for the actual cost of a program presented under Subsection (c)(1).

Sec. 1201.105. SECURITY REQUIRED. (a) Makes no changes to this subsection.

(b) Requires any other security filed to be maintained in or by a federally insured depository institution, rather than a banking institution, located in this state.

(c) Authorizes the board to direct the director to stop accepting bonds issued by a surety if TDHCA experiences significant problems in obtaining timely reimbursements from the surety.

SECTION 11. Amends Section 1201.106, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a license holder or applicant for a license to file a bond or other security for the issuance or renewal of a license in a certain amount.

(a-1) Authorizes the director, notwithstanding the provisions of Subsection (a), to require additional security for the licensing, renewal, or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur unreimbursed costs of liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

SECTION 12. Amends Section 1201.108, Occupations Code, as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) Provides that a new bond is not required for a change in location or ownership of a licensee or a business entity under which a license holder conducts business, rather than ownership of a corporation that is a license holder.

(b) Requires a licensee to notify TDHCA of a change described in Subsection (a) not later than the 10th day before the date the change occurs.

(c) Requires the licensee, after a change described by Subsection (a), to provide to TDHCA a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption. Deletes existing text authorizing the director to require a proper endorsement of the original bond.

SECTION 13. Amends Sections 1201.113(a), (b), and (c), Occupations Code, as follows:

(a) Requires the board to approve or administer continuing education programs for licensees under this chapter. Requires a continuing education program to be at least eight hours long and include the current TDHCA rules and such other matters as the board may deem relevant. Deletes existing text requiring the board to recognize, prepare, or administer a certification and continuing education program for salespersons regulated under this chapter.

(b) Provides that attendance at an approved or administered continuing education course described by Subsection (a) is a prerequisite to renewal of a license.

Deletes existing text requiring a person who holds a salesperson's license to participate in certification and continuing education programs as provided by Subsection (c).

(c) Requires that no test is to be given in relation to any continuing education program. Deletes existing Subsection (c) authorizing the board to contract with certain private, nonprofit organizations and educational institutions in order to prepare or administer a certification or continuing education program under this section.

SECTION 14. Amends Section 1201.114, Occupations Code, as follows:

Sec. 1201.114. New heading: LICENSE EXPIRATION; PROBATIONARY LICENSE. (a) Provides that any license issued under this chapter, other than a probationary license, is valid for two years. Deletes existing text providing that a manufacturer's, retailer's, broker's, or installer's license is valid for one year and a salesperson's license is valid for two years.

(b) Authorizes the director to issue a probationary license on such terms and for such period as are deemed reasonable if it is determined that a licensed salesperson or installer should receive a probationary license. Authorizes the issuance of a license on a probationary basis, any one or more of the specific terms of the probation, or the period of probation to be appealed before the 31st day after issuance of the probationary license by written notice to the director. Requires the director, if appeal is made, to set the matter for a hearing before the State Office of Administrative Hearings (SOAH), and requires all administrative proceedings relating to the issuance of the probationary license to be deemed to be a contested case under Chapter 2001, Government Code. Requires the probationary license, if no appeal is made, to be issued and remain in effect in accordance with the terms specified. Deletes existing Subsection (b) authorizing the board by rule to adopt a system under which licenses expire on specific dates during the year and provides a process to determine the amount of fees owed during the year in which the license expiration date is changed.

SECTION 15. Amends Subchapter C, Chapter 1201, Occupations Code, by adding Section 1201.118, as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. Requires 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 been found to have committed certain violations under this chapter, engaged in activity subject to this chapter without holding the required license, caused the trust fund to incur unreimbursed payments or claims, or failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 16. Amends Section 1201.1505, Occupations Code, as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. Authorizes a retailer to require a deposit, rather than an earnest money deposit, on a specially ordered manufactured home. Deletes existing text authorizing a retailer to require a deposit only if certain conditions are met.

SECTION 17. Amends the heading to Section 1201.151, Occupations Code, to read as follows:

Sec. 1201.151. REFUNDS.

SECTION 18. Amends Section 1201.151, Occupations Code, by amending Subsection (a) and adding Subsection (e), as follows

(a) Requires a retailer, rather than a retailer, salesperson, or agent of the retailer, to refund a consumer's deposit not later than 15 days after the date that a written request for the refund is received from the consumer.

(e) Provides that a deposit becomes a down payment upon execution of a binding written agreement. Requires the retailer, not later than the 15th day after the date of the rescission, to refund to the consumer all money and other consideration received from the consumer, without offset or deduction, if the consumer exercises a right of rescission.

SECTION 19. Amends Section 1201.1521, Occupations Code, as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) Creates this subsection from existing text. Authorizes a person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase, not later than the third day after the date the applicable contract is signed, to rescind the contract without penalty or charge.

(b) Authorizes a consumer, subject to rules adopted by the board, to waive a right of rescission in the event of a bona fide emergency. Requires such rules, to the extent practicable, to be modeled on the federal rules for the waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226 (Truth in Lending).

SECTION 20. Amends Section 1201.158, Occupations Code, as follows:

Sec. 1201.158. SALESPERSON. Authorizes a licensed salesperson to work only for the person's sponsoring retailer or broker. Deletes existing text authorizing a licensed salesperson to work for more than one retailer or broker or at more than one sales location.

SECTION 21. Amends Section 1201.159, Occupations Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Creates an exception provided by Section 1201.456, to the requirement that a broker ensures the seller gives the buyer applicable disclosures and warranties.

(c) Requires a broker to provide to any person who engages the broker's services a written disclosure of which interests in the transaction, if any, the broker represents.

(d) Authorizes a broker to assist in the sale of a manufactured home only if that seller has a current license.

SECTION 22. Amends Section 1201.161, Occupations Code, by amending Subsections (a) and (d) and adding Subsection (e), as follows:

(a) Provides that a licensed retailer or installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by the Texas Department of Transportation (TxDOT) under Subchapter E (Manufactured and Industrialized Housing), Chapter 623, Transportation Code, rather than except as required by TDHCA or TxDOT.

(d) Authorizes TDHCA to pay the reasonable cost of providing the copies or the list and information under Subsection (c), unless the information is provided electronically.

(e) Authorizes the copies and lists to be provided electronically.

SECTION 23. Amends Sections 1201.162, Occupations Code, as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) Requires the retailer, rather than the retailer or agent, to provide to the consumer a written disclosure in a form promulgated by the board 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 [sic] option that will not be financed. Requires the disclosure form to be printed in at least 12-point type, address certain matters of concern related to manufactured home ownership, and conspicuously disclose the consumer's right of rescission. Deletes existing text providing a statement required to be provided to the consumer before the completion of a credit application.

(b) Redesignated from existing Subsection (d).

(c) Requires the right of rescission described in Subsection (a) to apply only to the sale transaction between the retailer and the consumer.

Provides that failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. Requires the consumer to continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). Requires the consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) to constitute conclusive proof of the delivery of the disclosure. Requires the right of rescission to immediately cease on the filing of the lien with TDHCA if the consumer grants a person other than the retailer a lien.

SECTION 24. Amends Section 1201.164, Occupations Code, as follows:

Sec. 1201.164. New heading: ADVANCE COPY OF CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) Requires a retailer to deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer, in a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations, rather than in a chattel mortgage transaction involving an installment contract. Creates an exception provided by Subsection (b) relating to the consumer accepting the offer in a certain time frame. Makes a conforming change.

(b) Authorizes the consumer to modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. Requires the consumer, if the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, to give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, as applicable, and bears the signature of all of the consumers entitled to the disclosure and right of rescission. Requires the retailer, in such event, to immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required waiting periods or the right of rescission. Provides that printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. Authorizes the retailer, if the governor declares a county to be a major disaster area, to use printed forms promulgated by TDHCA. Requires this exception to expire one year after the county has been declared a major disaster area.

SECTION 25. Amends Sections 1201.203, 1201.204, and 1201.205, Occupations Code, as follows:

Sec. 1201.203. FORMS; RULES. (a) Requires the board, rather than the director, to adopt rules and forms relating to the manufacturer's certificate, the statement of ownership and location, the application for a statement of ownership and location, and the issuance of an initial or revised statement of ownership and location, rather than the

issuance of a statement of ownership and location at the first retail sale and for a subsequent sale or transfer of a manufactured home.

(b) Requires the board, rather than the director, 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 the rules to protect the lienholder recorded with TDHCA, rather than recorded on a statement of ownership and location, a certificate, or other document of title.

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) Requires a manufacturer's certificate to show, among other things, the original transfer of a manufactured home from the manufacturer to the retailer on a form prescribed by the director, rather than by the director or on another document.

(b) Provides that a security interest in inventory evidenced by a properly recorded inventory finance lien, rather than the manufacturer's certificate, automatically converts to a security interest in proceeds and cash proceeds.

(c) Requires, rather than authorizes, the retailer to submit the original manufacturer's certificate for a manufactured home to TDHCA after the first retail sale of the home. Requires TDHCA, on or before the issuance of the requested statement of ownership and location, to send written notice to each party currently reflected in TDHCA's records as having a recorded lien on the inventory of that retailer if an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not provide it as required. Provides that failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or consented to by the consumer.

Sec. 1201.205. New heading: STATEMENT OF OWNERSHIP AND LOCATION FORM. Requires a statement of ownership and location to be evidenced by a board-approved form issued by TDHCA setting forth certain information and statements.

SECTION 26. Amends Section 1201.2055, Occupations Code, by amending Subsection (b) and adding Subsections (i), as follows:

(b) Requires a statement of election under Subsection (a) to be executed before a notary on the form of application for statement and [sic] ownership and location promulgated by the board. Deletes existing text requiring a statement of election to be made by affidavit.

(i) Provides that, notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, may obtain from TDHCA a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that certain conditions are met.

SECTION 27. Amends Sections 1201.206, 1201.207, 1201.2075, 1201.2076, and 1201.208, Occupations Code, as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Redesignated from existing Subsection (b). Requires the retailer to surrender to TDHCA the original manufacturer's statement of origin in accordance with Section 1201.204 at the same time that the retailer applies for the first statement of ownership and location.

(b) Redesignated from existing Subsection (c). Requires the retailer to provide to TDHCA the completed application for the issuance of a statement of ownership and location not later than 60, rather than 30, days after the date of the retail sale. Authorizes the consumer to apply for the issuance of a statement of ownership and location if for any reason the retailer does not timely comply with the requirements of this subsection.

(c) Redesignated from existing Subsection (d). Makes conforming changes.

(d) Requires the seller to file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the trade-in manufactured home from the prospective buyer to the seller if the seller accepts a trade-in manufactured home as part of the consideration for the sale of another manufactured home. Requires the seller to file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home that was sold by the seller. Requires the seller, if the seller is a retailer, to indicate on the application for the issuance of the new statement of ownership and location whether the trade-in manufactured home has been added to the inventory of the retailer.

(e) Makes no changes to this subsection.

(f) Makes a conforming change.

(g) Requires the seller, when the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory, to also file with TDHCA a written statement from the tax assessor-collector that there are no personal property taxes due on the manufactured home that have accrued on each January 1 that falls within the 18 months before the date of the sale.

(h) Authorizes TDHCA to assess an additional fee of at least $100 against the seller if a person selling a manufactured home to a consumer for residential use fails to file with TDHCA the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale. Requires TDHCA have the authority to enforce the collection of any additional fee from the seller through judicial means. Requires TDHCA to place on the application for the issuance of a statement of ownership and location a specific legend regarding a late fee that may be assessed.

(i) Requires the notice to be accompanied by certain copies of the notice when a properly completed notice of installation on TDHCA's promulgated form is filed that relates to a secondary move.

(i-1) Authorizes TDHCA to adopt a discounted fee for the filing of the notice of installation if the method specified in Subsection (i)(2) is used to report the installation.

(j) Requires TDHCA, on request, to provide the tax collector one copy of any requested reported notice of installation in addition to providing each chief appraiser the monthly report required by Section 1201.220.

(k) Authorizes TDHCA to issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable supporting proof as the director may require if, notwithstanding any provision in this chapter to the contrary, a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Creates an exception provided for in Subsection (a-1) to the requirement that TDHCA processes completed applications within a specific time frame.

(a-1) Requires TDHCA, for the period immediately following June 30 of each year, to cease issuing of statements of ownership and location until all tax liens filed with TDHCA before June 30 have been processed and either recorded or rejected, except for applications relating to new manufactured homes and applications accompanied by a tax certificate. Provides that, during this period, TDHCA will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) Requires TDHCA to maintain a record of the issuance in its electronic records, rather than placing the original statement in its files, and requires TDHCA to mail a copy, rather than a certified copy, to the owner and each lienholder if TDHCA issues a statement of ownership and location for a manufactured home.

(c) Authorizes TDHCA to issue subsequent statement of ownership and location for the home if all parties reflected in TDHCA's records as having an interest in the home give their written consent or release their interest by TDHCA's procedures provided by Section 1201.206(k) to document ownership and lien status. Prohibits TDHCA from altering the record of the ownership or lien status of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative or a court order.

(d) Provides that, notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. Entitles the owner of an existing lien to recover the value of the lien from the retailer if there is an existing lien on the new home perfected with TDHCA.

(e) Provides that, notwithstanding any other provisions of this chapter, if the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Creates an exception as provided by Section 1201.2062 to the prohibition of TDHCA from issuing a statement of ownership and location for a manufactured home that is being converted from personal property to real property for a certain amount of time.

(b) Authorizes TDHCA to issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section if TDHCA releases a certified copy of the statement to a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed or a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Makes no changes to this subsection.

(b) Authorizes TDHCA, for the purposes of Subsection (a)(1), to rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Requires any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home. Deletes existing text prohibiting TDHCA from issuing a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid.

(b) Requires the payment to be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license if it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, and requires a claim for reimbursement to be filed with the licensee's surety or the amount deducted from the security for the license. Deletes existing text authorizing proof of payment to be shown in any manner prescribed by TDHCA.

SECTION 28. Amends Section 1201.210, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that if an appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Requires TDHCA to place a hold on any activity relating to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 29. Amends Section 1201.214(b) , Occupations Code, to require TDHCA to mail to the owner or lienholder a copy, rather than a certified copy, of the statement of ownership and location issued under this subsection.

SECTION 30. Amends Section 1201.216(a), Occupations Code, to make conforming and nonsubstantive changes.

SECTION 31. Amends Section 1201.217, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (f), as follows:

(b) Requires the owner of real property where a manufactured home is located, to send a notice of intent to declare the home abandoned to the record owner of the home, all lienholders at the addresses listed on the home's statement of ownership and location on file with TDHCA, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located. Requires the notice to include the address where the home is currently located. Requires a reasonable effort to be made to locate the person for whom the notice is intended if that person does not reside and is no longer receiving mail at such address.

(c) Authorizes the record owner for the home, a lienholder, or a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located to enter the real property where the home is located to remove the home on receipt of a notice of intent to declare a manufactured home abandoned. Requires the real property owner to disclose to the record owner, lienholder, or tax assessor-collector seeking to remove the home the location of the home and grant the person reasonable access to the home. Provides that a person removing the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) Provides that this section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

SECTION 32. Amends Sections 1201.219 and 1201.220, Occupations Code, as follows:

Sec. 1201.219. PERFECTION AND EFFECT OF LIENS. (a) Provides that a lien on manufactured homes in inventory is perfected only by filing the lien with TDHCA on the required form. Deletes existing text providing that a lien on manufactured homes in inventory is perfected by filing a security agreement with TDHCA in a form that contains the information the director requires.

(b) Requires the form to require the disclosure of the original dollar amount of the lien and, if a tax lien, the name and address of the person in whose name the manufactured home is listed on the tax roll. Requires TDHCA on its website to disclose the date of each lien filing, the original amount of the lien claimed by each filing, and the fact that the amount shown does not include additional sums including interest, penalties, and attorney's fees. Provides that the statement required by Section 1201.205(7), rather than the recordation of a lien with TDHCA, is notice to all persons that the tax lien exists. Requires tax liens to be filed by the tax assessor-collector for any taxing unit with the power to tax the manufactured home. Provides that a single filing by a tax assessor-collector is a filing for all the taxing units for which the tax collector is empowered to collect.

(c) Provides that, notwithstanding any other provision of this or any other law, rather than subchapter, the filing of a lien security agreement on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201 (General Definitions), Business & Commerce Code, from acquiring good and marketable title free of that lien, and prohibits TDHCA from considering that lien for the purpose of title issuance. Makes conforming changes.

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) Requires TDHCA to provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home reported as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists certain information. Provides that certain information includes the name of the manufacturer of the home, if available, the model designation of the home, if available, the address or location where the home was reported as installed, and the reported date of the installation of the home.

(b) Makes a conforming change.

SECTION 33. Amends the heading to Section 1201.251, Occupations Code, to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD.

SECTION 34. Amends Section 1201.251, Occupations Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires the board, rather than the director, to adopt standards and requirements for the installation and construction of certain manufactured housing and the construction of certain HUD-code manufactured homes.

(d) Authorizes the board to adopt rules that provide for the approval of foundation systems and devices by licensed engineers. Requires a generic installation standard adopted by rule to first be reviewed by an advisory committee established by the board, in order to ensure that the standards and requirements adopted under this section are

recommended by qualified persons. Requires the advisory committee to include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices.

(e) Requires the advisory committee to submit a report to the board providing each comment and concern regarding any proposed rule. Provides that the members of the committee are not personally liable for providing the advice to the board.

SECTION 35. Amends Section 1201.252(a), Occupations Code, to make a conforming change.

SECTION 36. Amends Sections 1201.253, 1201.254, and 1201.255, Occupations Code, as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. Deletes existing text requiring the director to publish notice and conduct a public hearing in accordance with Sections 1201.054 and 1201.060.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Makes conforming changes.

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Creates this subsection from existing text. Requires manufactured housing that is installed to be installed in compliance with the standards and rules adopted and orders issued by TDHCA, rather than the director, except as authorized under Section 1201.252.

(b) Prohibits an installer from installing a 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 specific form promulgated by the board and the owner accepts that risk.

SECTION 37. Amends Section 1201.301(b), Occupations Code, to authorize a state inspector to travel inside or outside of the state to inspect the facility of a licensee, rather than a manufacturing facility.

SECTION 38. Amends the heading to Section 1201.302, Occupations Code, to read as follows:

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS.

SECTION 39. Amends Sections 1201.302(a) and (b), Occupations Code, to make conforming changes.

SECTION 40. Amends Sections 1201.351(a) and (b), Occupations Code, as follows:

(a) Requires the manufacturer of a new HUD-code manufactured home to warrant, among other things, that the home and all appliances and equipment included in the home are free from defects in materials or workmanship, except for cosmetic defects.

(b) Provides that the manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's acquisition of an already installed new home, whichever is later.

SECTION 41. Amends Sections 1201.352 through 1201.355, Occupations Code, as follows:

Sec. 1201.352. New heading: RETAILER'S WARRANTY ON A NEW HUD-CODE MANUFACTURED HOME. (a) Requires the retailer of a new HUD-code manufactured home to warrant to the consumer in writing that, among other things, installation of the home at the initial homesite was or will be, as applicable, completed in accordance with TDHCA standards, rules, orders, and requirements. Authorizes the warranty to expressly disclaim or limit any warranty regarding cosmetic defects.

(b) Provides that the retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of the initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Makes a conforming change.

(d) Requires the retailer to deliver to the consumer a copy of the warranty given by the licensed installer not later than 30 days after the date of installation of the new HUD-code manufactured home.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) Requires the consumer to give written notice to the manufacturer, retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Provides that written notice to TDHCA is deemed to be notice to the manufacturer, retailer, or installer commencing three business days after receipt and forwarding of the notice by TDHCA to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. Makes a conforming change.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) through (c) Makes conforming changes.

(d) Authorizes TDHCA, notwithstanding any other provision of this section (Consumer Complaint Home Inspection), to make an inspection at any time if TDHCA believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

SECTION 42. Amends Sections 1201.356(a), (b), and (c), Occupations Code, as follows:

(a) and (b) Makes conforming changes.

(c) Provides that both the installer and retailer are responsible for the warranty of installation with regard to new manufactured homes. Requires the director to issue the order to the installer for the corrective action if TDHCA determines that a complaint is covered by the installation warranty. Requires the installer to be subject to the provisions of Section 1201.357 if the installer fails to perform the corrective action and requires the director to issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time for compliance is needed upon showing of good cause by the retailer. Authorizes the retailer to seek reimbursement from the installer if the retailer is compelled to perform the corrective action because of the failure of the installer to comply with the director's order. Authorizes the period for performing the required warranty work to be shortened by the director as much as reasonably possible if the warranty work is believed necessary to address a possible imminent threat to health or safety, notwithstanding Subsection (f). Makes conforming changes.

SECTION 43. Amends Sections 1201.357 and 1201.358, Occupations Code, as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) Makes conforming changes.

(b) Requires the director to hold an informal meeting, rather than a hearing, if the manufacturer, retailer, or installer fails to provide warranty service in accordance with TDHCA order. Authorizes the consumer to express the consumer's views at the informal meeting. Requires the director to take certain actions following the meeting. Makes conforming changes.

(c) Makes conforming changes.

Sec. 1201.358. New heading: FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Makes conforming changes.

(b) Requires the director to issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties if it is determined that an order was incorrect regarding a warranty obligation. Deletes existing text providing that if after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. Makes conforming changes.

(c) Makes conforming changes.

(d) Deletes existing text authorizing a manufacturer or retailer to recover attorney's fees from the trust fund. Makes a conforming change.

SECTION 44. Amends Section 1201.361, Occupations Code, as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) Requires the installer to give the manufactured home owner a written warranty containing certain information for each installation, rather than all installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured home. Provides that the warranty for the installation of a new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. Provides that if the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) Provides that, unless the warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for a new manufactured home for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of installation.

SECTION 45. Amends Subchapter H, Chapter 1201, Occupations Code, by adding Section 1201.362, as follows:

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Requires nothing in this chapter to limit the ability of TDHCA to inspect a manufactured home at any time.

(b) Authorizes the director to take certain steps to have a defect corrected if during any inspection TDHCA identifies an aspect of an installation that does not conform to the applicable requirements, notwithstanding the limitations and terms of any warranty.

SECTION 46. Amends Section 1201.402(a), Occupations Code, to delete existing text providing that the director is the trustee of the trust fund.

SECTION 47. Amends Section 1201.404(b), Occupations Code, to require the director to pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

SECTION 48. Amends Section 1201.405, Occupations Code, by adding Subsections (f) and (g), as follows:

(f) Provides that the trust fund is not liable for and prohibits the director from paying attorney's fees or certain actual damages.

(g) Authorizes the board by rule to 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 reasonable estimates establishing that the cost will be reasonable. Authorizes such rules to also specify procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

SECTION 49. Amends Section 1201.406 and 1201.407, Occupations Code, as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) Requires a consumer to file a written, sworn complaint in the form required by the director to recover from the trust fund.

(b) Requires TDHCA, on receipt of a verified complaint, to notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses, and investigate the claim and issue a preliminary determination on the claim, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or dispute the preliminary determination.

(c) Provides that if the matter being investigated is not resolved by agreement or is disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination is required to automatically become final and requires the director to make demand on the surety or deduct any payable amount of the claim from the licensee's security.

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) Requires TDHCA to conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute if a preliminary determination is disputed, rather than if the license holders or a license holder and a consumer disagree as to responsibility for a complaint.

(b) Requires TDHCA to make any changes in the determination the director considers to be appropriate and issue another written preliminary determination as the responsibility and liability of the manufacturer, retailer, broker, and installer for a preliminary determination that had been disputed to become final and valid, rather than for a claim determined to be valid.

(c) Requires TDHCA, before making a final determination, to allow, rather than provide, a license holder 10 days, rather than an opportunity, to comment on this preliminary determination.

(d) Requires the director to issue a final determination after consideration of the comments made in relation to the preliminary determination.

(e) Authorizes the final determination to be appealed to the board on or before the 10th day after the date of issuance by giving written notice to the director, and requires the director to place the matter to the board for consideration at the next meeting on a date for which the matter could be publicly posted as required by Chapter 551 (Open Meetings), Government Code.

(f) Redesignated from existing Subsection (e). Deletes existing text requiring TDHCA to notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process under certain conditions.

SECTION 50. Amends Sections 1201.409(a) and (b), Occupations Code, as follows:

(a) Deletes existing text requiring the trust fund to be reimbursed by the surety on a bond or from other security filed under Subchapter C (Licensing) for the amount of a claim that resulted from an act or omission of the license holder who filed the bond or other security.

(b) Makes a nonsubstantive change.

SECTION 51. Amends Section 1201.410, Occupations Code, as follows:

Sec. 1201.410. New heading: INFORMATION ON RECOVERY FROM TRUST FUND. Requires the director to prepare information for notifying, rather than a pamphlet informing, consumers of their rights to recover from the trust fund. Requires the director to make the information available to consumers on TDHCA's website and make printed copies available on request. Deletes existing text authorizing the director to contract with a private party for the printing and distribution of the pamphlet.

SECTION 52. Amends Section 1201.451(b), Occupations Code, to require the seller to forward necessary documents to the purchaser or transferee not later than 60, rather than 30, days after the effective date of the transfer of ownership. Authorizes the purchaser or transferee to apply directly for the issuance of a statement of ownership and location if the seller or transferor fails to forward the necessary, executed documents.

SECTION 53. Amends Section 1201.453, Occupations Code, to provide that manufactured housing is habitable only if, among other things, all exterior doors and windows are in place and operate properly.

SECTION 54. Amends Section 1201.457(b), Occupations Code, to prohibit any person from knowingly allowing another person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage if a used manufactured home is reserved for business use or salvaged. Deletes existing test prohibiting the purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home from selling, exchanging, or lease-purchasing the home for use as a dwelling.

SECTION 55. Amends Section 1201.459, Occupations Code, as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) Provides that a tax assessor-collector, rather than a tax collector, is not required to comply with this subchapter (Used or Salvaged Manufactured Homes) or another provision of this chapter relating to the sale of a used manufactured home in order to collect delinquent taxes.

(b) Authorizes a tax appraiser or a tax assessor-collector, rather than just a tax collector, to apply to TDHCA for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home. Deletes existing text authorizing the collector to pay the applicable fee and recover that fee as part of the cost of the sale of the home.

(c) Makes conforming changes.

SECTION 56. Amends the heading to Section 1201.461, Occupations Code, to read as follows:

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

SECTION 57. Amends Section 1201.461, Occupations Code, by adding Subsections (g) and (h), as follows:

(g) Authorizes a county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage to impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) Prohibits a licensee from participating in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and TDHCA rules. Provides that an act that is prohibited by this subsection is deemed to be a practice that constitutes an

imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. Provides that a violation of this subsection is a Class B misdemeanor.

SECTION 58. Amends Section 1201.503, Occupations Code, to prohibit a manufacturer, retailer, broker, or installer from altering a home to which a label has been attached and before installation of the home before the sale to a consumer without obtaining prior written approval from a licensed engineer and providing evidence of such approval to TDHCA.

SECTION 59. Amends Section 1201.506(a), Occupations Code, to require a retailer or broker to comply with all applicable provisions of the Finance Code.

SECTION 60. Amends Subchapter K, Occupations Code, by adding Section 1201.513, as follows:

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) Prohibits a retailer from selling a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) Prohibits 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 the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 61. Amends Sections 1201.551, 1201.552, and 1201.553, Occupations Code, as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) Authorizes the director to deny, permanently revoke, or suspend a license if it is determined that the applicant or license holder, among other things, failed repeatedly to file with TDHCA a completed application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later., and that the license holder or applicant has had another license issued by this state revoked or suspended.

(b) Authorizes the director, rather than TDHCA, to suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made, rather than the license holder or the license holder's surety participate in the information dispute resolution process described by Section 1201.407.

Sec. 1201.552. New heading: LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. Authorizes the director to issue an order to revoke, suspend, or deny a new or renewal license. Requires the director, if before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom that order is issued requests a hearing by giving written notice to the director, to set a hearing before SOAH. Provides that if the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Requires any administrative proceedings related to the revocation, suspension, or denial of a license under this subsection to be a contested case under Chapter 2001, Government Code. Requires the board to issue an order after receiving a proposal for decision. Deletes existing text requiring the director to conduct a hearing involving the denial, renewal, revocation, or suspension, of a license in accordance with Chapter 2001, Government Code.

Sec. 1201.553. JUDICIAL REVIEW. Makes conforming changes.

SECTION 62. Amends Section 1201.605, Occupations Code, as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) Authorizes the director to assess against a person who fails to comply with, rather than obtain or maintain a license as required by, this chapter or the rules adopted under this chapter, or a final order of TDHCA, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and other specific fees.

(b) Authorizes the director to assess against a licensee, rather than a retailer, who fails to provide information to a consumer an administrative penalty in a certain amount based on the number of violations committed.

(c) Requires the director to consider certain factors regarding the violation in determining the amount of an administrative penalty assessed under this section.

(d) Authorizes the director to impose an administrative penalty in accordance with this section. Requires the director to set a hearing before SOAH if before the 31st day after the date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director. Provides that the penalty becomes final if the person does not request a hearing before the 31st day after the date the person received notice of the imposition of the administrative penalty. Requires any administrative proceedings relating to the imposition of an administrative panlty under this subsection to be a contested case under Chapter 2001, Government Code. Requires the board to issue an order after receiving a proposal for decision.

SECTION 63. Amends Subchapter M, Chapter 1201, Occupations Code, by adding Sections 1201.607 through 1201.611, as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Provides that an order issued by the director under this chapter automatically becomes a final order if the order is not appealed before the 31st day after the date the order was issued. Requires the order be deemed to have been appealed and is a contested case under Chapter 2001, Government Code, if the person made the subject of the order files a written request for a hearing with the director. Requires the director to set any appealed order for a hearing before SOAH. Requires the board to issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) Authorizes TDHCA to inspect a licensee's records during normal business hours without advance notice if the director believes that such inspection is necessary for certain reasons.

(b) Authorizes the director to request or issue a subpoena for a licensee's records.

(c) Authorizes TDHCA to carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate to detect and address suspected violations of this chapter.

(d) Provides that, while an investigation is pending, information obtained by TDHCA in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. Provides that a person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. Provides that a second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) Authorizes the director to issue to the license holder without notice and hearing an order to ceases and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter, if there is reasonable cause to believe that a person licensed under this

chapter has violated or is about to violate any a provision of this chapter or the rules adopted by TDHCA under this chapter.

(b) Authorizes the director to issue an order to a licensee to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to 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. Requires the director to consult with the person in charge of the day-to-day administration of that agency before issuing an order of any matter involves a law that is subject to any other administration or interpretation by another agency.

(c) Requires an order issued under Subsection (a) or (b) to contain a reasonably detailed statement of the facts on which the order is based. Requires the director to set and give notice of a hearing if a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued. Requires the hearing to be governed by Chapter 2001, Government Code. Authorizes the board by order to find that a violation has or has not occurred based on the findings of fact, conclusions of law, and recommendations of the hearings officer.

(d) Provides that the order is considered final and not appealable if a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued.

(e) Authorizes the director, after giving notice, to impose a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. Authorizes the director to institute in district court a suit for injunctive relief and for the collection of the administrative penalty. Provides that a bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) Authorizes the director, without prior hearing and after not less than 10 days' notice to the person, to suspend the person's license if a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law. Requires the suspension to continue until the person has complied with the cease and desist order or paid the administrative penalty. Prohibits the person from performing 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 during the period of suspension.

(g) Authorizes an order of suspension under Subsection (f) to be appealed. Provides that an appeal is a contested case governed by Chapter 2001, Government Code. Requires a hearing of an appeal of an order of suspension issued under Subsection (f) to be held not later than 15 days after the date of receipt of the notice of appeal. Requires the appellant to be provided at least three days' notice of the time and place of the hearing.

(h) Authorizes an order revoking the license of a retailer, broker, installer, or salesperson to provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) Requires the board to adopt rules relating to the administrative sanctions that may be enforced against a person regulated by TDHCA.

(b) Requires the director to issue an order approving the determination and ordering the person to pay the recommended penalty if the person charged with a violation accepts the director's determination.

(c) Requires the person charged to either pay the penalty in full or take certain alternative actions not later than 30 days after the date on which the decision is final.

(d) Entitles a person charged with a penalty who is financially unable to comply with Subsection (c) to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) Authorizes TDHCA or the attorney general to bring an action for the collection of the penalty if the person charged does not pay the penalty and does not pursue judicial review.

(f) Provides that judicial review of the director's order assessing the penalty is subject to the substantial evidence rule and requires the judicial review to be instituted by filing a petition with a district court in Travis County.

(g) Requires the director, if, after judicial review, the penalty is reduced or not assessed, to remit to the person the appropriate amount, plus accrued interest if the penalty has been paid, or requires the director to execute a release of a supersedeas bond that has been posted. Requires the accrued interest on amounts remitted by the director under this subsection to be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and require the accrued interest to be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) Requires a penalty collected under this section to be deposited in the trust fund.

(i) Provides that all proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) Authorizes the attorney general, on behalf of the director, to institute an action for injunctive relief to restrain a person from continuing a violation for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate if it appears that the person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program. Requires a civil action filed under this subsection to be filed in district court in Travis County. Authorizes the attorney general and the director to recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 64. Amends Section 2306.6022(b), Government Code, to require the manufactured housing division (division) to make available on its website, rather than provide to the person filing the complaint and to each person who is a subject of the complaint a copy of, the division's policies and procedures relating to complaint investigation and resolution and provide copies of such information on request.

SECTION 65. Amends Section 94.051, Property Code, to change the language to be included on a separate disclosure statement to be given to a tenant.

SECTION 66. Amends Section 94.052(b), Property Code, to create an exception provided by Section 94.204 to the provisions of a landlord who chooses not to renew a lease and to make nonsubstantive changes.

SECTION 67. Amends Section 94.053(c), Property Code, to make a nonsubstantive change.

SECTION 68. Amends the heading to Section 94.204, Property Code, to read as follows:

Sec. 94.204. NONRENEWAL OF LEASE FOR CHANGE IN LAND USE.

SECTION 69. Amends Section 94.204(a), Property Code, to authorize a landlord to choose not to renew a lease agreement to change the manufactured home community's land use only if certain actions are taken by the landlord not later than the 180th day before the date the land use will change.

SECTION 70. Amends Sections 11.432(a) and (b), Tax Code, as follows:

(a) Requires that the application for exemption be accompanied by, among other things, a 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 for the home is displayed on the TDHCA website. Authorizes the appraisal district to rely upon the computer records of TDHCA to determine whether a manufacture home qualifies for an exemption.

(b) Entitles the consumer to obtain the homestead exemptions provided by Section 11.13 (Residence Homestead) regardless of whether an owner has elected to treat the manufactured home as real property or personal property or the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 71. Amends Section 31.072, Tax Code, by adding Subsection (i), to require the collector to enter into a contract with a property owner who owns the manufactured home and requests the establishment of the escrow account if, notwithstanding Subsection (a), the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home.

SECTION 72. Amends Section 32.03, Tax Code, as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Makes no changes to this subsection.

(a-1) Authorizes a tax lien, with regard to a manufactured home, to be recorded at any time not later than six months after the end of the calendar year for which the tax was owed. Authorizes a tax lien on a manufactured home to be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. Prohibits a properly recorded tax lien from being enforced against a new manufactured home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business. Deletes existing text prohibiting a tax lien against a manufactured home from being enforced unless it has been recorded with TDHCA within a certain time frame.

(a-2) Prohibits a person from transferring ownership, rather than a title, of a manufactured home until all tax liens perfected on the home that have been filed in a timely manner with TDHCA and until any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid.

(b) Prohibits a taxing unit nor anyone acting on its behalf from using a tax warrant or any other method to attempt to execute or foreclose on the manufactured home unless a tax lien has been filed in a timely manner with TDHCA.

(c) Authorizes a taxpayer to designate in writing which tax year will be credited with a particular payment. Requires the taxing unit to issue a receipt for the

payment of the taxes for the designated year once a taxpayer pays all the amounts owing for a given year.

(d) Authorizes the taxing unit to file a tax lien within the 150-day period following the date on which the tax becomes delinquent if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, notwithstanding any other provision of law.

(e) Requires the taxing unit to provide upon request an estimated amount of taxes computed in a certain manner if personal property taxes on the home have not been levied by the taxing unit. Requires the tax collector to accept payment of the estimated personal property taxes and issue a certification to TDHCA that the estimated taxes are being held in escrow until the taxes are levied in order to enable transfer of the manufactured home. Requires the tax collector, once the taxes are levied, to apply the escrowed sums to the levied taxes. Requires the tax collector, at the time he or she accepts payment of the taxes, to provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 73. (a) Repealer: Sections 1201.059 (Fees for Statements of Ownership and Location), 1201.112 (Temporary Installers License), 1201.113(c), (d), (e), (f), and (g) (relating to providing a certification or continuing education program), 1201.163 (Chattel Mortgage Transaction: Consumer Protection Disclosures), 1201.214(c) (requiring an owner or lienholder who applies for the issuance of a statement of ownership and location to replace a lost or destroyed document of title to execute an affidavit), 1201.214(d) (requiring an owner or lienholder to surrender the original document of title if found), and 1201.408 (Agreement of Parties; Arbitration), Occupations Code.

(b) Repealer: Section 2306.6023 (Sanctions and Penalties), Government Code.

SECTION 74. Makes application of Sections 94.051, 94.052, 94.053, and 92.204, Property Code, as amended by this Act, prospective.

SECTION 75. Provides that the change in law made by this Act applies only to the sale, exchange, or lease-purchase of a new or used manufactured home on or after the effective date of this Act.

SECTION 76. Provides that, except as otherwise provided by this Act, the changes in law made by this Act apply only to a license issued or renewed by TDHCA on or after January 1, 2008.

SECTION 77. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

SECTION 78. Makes application of this Act prospective to an ad valorem tax year that begins on or after January 1, 2008. Provides that the changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and that previous law is continued in effect for purposes of the tax lien.

SECTION 79. Effective date: January 1, 2008.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 15, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 2nd House, Substituted: a negative impact of ($215,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($138,388)
2009	($76,975)
2010	($76,975)
2011	($76,975)
2012	($76,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2007
2008	($138,388)	1.5
2009	($76,975)	1.0
2010	($76,975)	1.0
2011	($76,975)	1.0
2012	($76,975)	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first

retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the agency being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require 0.5 FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 4, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Engrossed: a negative impact of ($215,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($138,388)
2009	($76,975)
2010	($76,975)
2011	($76,975)
2012	($76,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2007
2008	($138,388)	1.5
2009	($76,975)	1.0
2010	($76,975)	1.0
2011	($76,975)	1.0
2012	($76,975)	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the

deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The

Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 27, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1460 by Haggerty (relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 1st House, Substituted: a negative impact of ($2,051,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($1,056,388)
2009	($994,975)
2010	($994,975)
2011	($994,975)
2012	($994,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926	Change in Number of State Employees from FY 2007
2008	($918,000)	($138,388)	$918,000	1.5
2009	($918,000)	($76,975)	$918,000	1.0
2010	($918,000)	($76,975)	$918,000	1.0
2011	($918,000)	($76,975)	$918,000	1.0
2012	($918,000)	($76,975)	$918,000	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the purposes of the fund. Administrative penalties and $10 of each statement of ownership and location fee would be deposited to the credit of the fund. The executive director of the Texas Department of Housing and Community Affairs (TDHCA) would administer the fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the specific purposes of the fund. Administrative penalties—estimated to be $18,000 annually—now dedicated to the General Revenue Fund 0001 would be dedicated to the trust fund. In addition, $10 of each $55 fee collected for a statement of ownership and location and currently deposited to Fund 0001 would be deposited to the trust fund. TDHCA estimates that 90,000 statements are sold each fiscal year. The table above reflects

the Comptroller's estimate of revenue loss to General Revenue and subsequent gain to the Trust Fund.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 20, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, and regulation of manufactured housing.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Introduced: a negative impact of ($1,568,720) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($792,080)
2009	($776,640)
2010	($776,640)
2011	($776,640)
2012	($776,640)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *APPROPRIATED RECEIPTS* 666	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926
2008	($600,000)	($192,080)	($905,000)	$600,000
2009	($600,000)	($176,640)	($897,200)	$600,000
2010	($600,000)	($176,640)	($897,200)	$600,000
2011	($600,000)	($176,640)	($897,200)	$600,000
2012	($600,000)	($176,640)	($897,200)	$600,000

Fiscal Year	Change in Number of State Employees from FY 2007
2008	5.0
2009	5.0
2010	5.0
2011	5.0
2012	5.0

Fiscal Analysis

The bill would amend the Tax Code, the Occupations Code, and the Finance Code, relating to the

taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption would be claimed on a personal property manufactured home and that a taxing authority would rely on the computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. The bill would note the requirements necessary for a tax assessor-collector to enter into a contract to establish an escrow account with a property owner for the payment of property taxes.

The bill would establish that a valid tax lien filed timely with TDHCA would be deemed notice of a lien, require the payment of personal property taxes accrued on each January 1 within 18 months of the date of sale in order to transfer title, place limits on the use of tax warrants in foreclosure, and give taxpayers the right to designate payments to a tax year.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow, apply payments when due, and notify a new owner of any liability that might be due. The bill would allow a prospective buyer (when seeking certification from a tax assessor-collector that taxes have been paid) to pay two years back taxes if a home had been omitted from the tax rolls by mistake.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. In addition, the bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000).

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as the Manufactured Homeowner's Recovery Fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 45 days. Failing to meet the deadline, if repeatedly violated, would lead to the revocation or suspension of a license and allow the board to assess administrative penalties ranging from $1,000 for a first violation to $4,000 for each subsequent violation. Persons not licensed or failing to take required actions would face an administrative penalty not to exceed $10,000, plus other reasonable fees and expenses. Persons operating without a license would commit an offense punishable as a class A or B misdemeanor and would be liable for damages. Violations would be subject to an administrative penalty not to exceed $1,000 per day for each violation. Penalties would be deposited to the credit of the fund.

The bill would amend Chapter 347 of the Finance Code, relating to the rights and responsibilities of an owner of a security interest in a home and the precedence of liens on a home.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

Methodology

The bill would broaden the definition of a manufactured home to include homes smaller in size than "HUD-code" manufactured homes, sometimes referred to as "park models." Because there are no data on the number of these homes in existence, the fiscal impact of this provision cannot be estimated.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption may be claimed on a personal property manufactured home and that a taxing authority would rely on the

computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. This language would not change current law regarding the eligibility of mobile homes for homestead exemptions, and it would not create a significant cost to local governments or to the state.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000). There would be no fiscal impact to the state for this change.

The bill would authorize administrative penalties ranging from $1,000 to $10,000, plus other reasonable fees and expenses for violations.

The administrative cost estimate to the Comptroller's Office reflects the costs associated with the handling of complaints, administrative hearings, and mandates, which would require two hearings examiners with associated administrative costs. This cost is expected to be $240,840 per year and require 2 full time employees for each year. This cost is not reflected in the above table.

The administrative cost estimate to TDHCA reflects costs related to disciosing the name and address of the person obligated on the taxes and amount of each lien on a tax lien recording. The bill would also require TDHCA to provisionally record a lien on a record that reflects a taxpayer name that is different from the name of the owner and requires TDHCA to notify the appraisal district of the disparity and allow the taxing authority to resubmit an amended tax lien reflecting the name of the owner of the home within 60 days of notification. The cost is expected to be $905,000 in fiscal year 2008 and $897,200 per year beginning in fiscal year 2009 and require 3 full time employees for each year.

The bill would create the General Revenue-Dedicated - Homeowners' Recovery Fund and terminate the Manufactured Homeowners' Recovery Trust Fund in the General Revenue Fund. This fund would generate approximately $900,000 each year in fees and TDHCA anticipates that approximately $300,000 each year will be expended for carrying out the specific purposes of the fund.

The Office of the Attorney General (OAG) reports that the Manufactured Housing Division of the Texas Department of Housing and Community Affairs currently has no staff attorneys. The Department relies on the OAG's Administrative Law Division (ALD) for all general counsel work, enforcement work, and administrative law litigation.

Greater need for enforcement in this industry has been identified as a problem affecting the rights of consumers. Sec. 18, subsection (g) creates new enforcement authority for the Department that will require action by ALD. Sec. 32 creates additional new due process hearings and suits for injunctive relief and civil penalties--the ALD estimates that this will have significant impact in order to accomplish the goal of greater enforcement. As a result, the OAG would require 1 attorney in each fiscal year 2008-2012.

It is estimated that one FTE attorney will also be required to assist the Department in analyzing and implementing this bill, based on the complexity of the issues--taxing, lien recordation, and enforcement, and based on historic use of general counsel services for this purpose by the Department.

The OAG's Administrative Law Division would require, in each fiscal year 2008 -2012, one Assistant Attorney General II (AAG) to handle enforcement work and one AAG IV to handle general counsel work associated with passage of the bill. The cost in fiscal year 2008 is $192,080 and $176,640 in each fiscal year thereafter. The OAG will require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

There would be a technology cost to the Department of Housing and Community Affairs of $7,800 in fiscal year 2008 and $4,800 in fiscal year 2013. There would also be a one-time technology impact to the Office of the Attorney General of $2,787 in fiscal year 2008 for network stations and software.

Local Government Impact

Costs to local tax collectors would depend on the number of instances in which personal property taxes have not been levied by the taxing unit and there is a prospective buyer of the manufactured home. Most of these costs would be for letterhead, postage, and personnel time to collaborate with TDHCA and new owners to clear up any outstanding tax or escrow issues.

In addition, the bill could have a negative fiscal effect on local taxing authorities by deleting liens not matching TDHCA records. Without a lien on file, a taxing authority would see a loss of tax collection revenue.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, JM, AH, SJS, KJG

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR KIM BRIMER, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that CSHB 1460 (Bill No.), by Haggerty/Harris (Author/Sponsor),

was heard by the Committee on Business and Commerce on 5/10, 2007,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Kathy Reagan
(Clerk of the reporting committee)

IMPORTANT: TWO COPIES OF THIS FORM MUST BE ATTACHED TO A **COMMITTEE PRINTED VERSION** OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

Paper clip the original to the bill; retain pink copy for committee files; deliver yellow copy to bill author/sponsor.

ADOPTED

MAY 22 2007

Secretary of the Senate

By: Haggerty / Harris H.B. No. 1460

Substitute the following for H.B. No. 1460:

By: Chris Harris C.S.H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended to read as follows:

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the

modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) [~~(2-a)~~] "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) [~~(3)~~] "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) [~~(4)~~] "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured

JCC

homes.

(7) [~~(5)~~] "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(8) [~~(6)~~] "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(9) "Control" means, with respect to another person, the possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(10) [~~(7)~~] "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) [~~(8)~~] "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) [~~(9)~~] "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections;

JCC

and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) [~~(10)~~] "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) [~~(11)~~] "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) [~~(12)~~] "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(16) [~~(13)~~] "Lease-purchase" means entering into a lease contract for a manufactured home, in which the lessor retains

JCC

title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.

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

(18) [~~(15)~~] "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) [~~(16)~~] "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(20) [~~(17)~~] "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(22) [~~(18)~~] "Person" means an individual or a

JCC

partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who directly or indirectly participates in management or policy decisions.

(24) [~~(19)~~] "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) [~~(20)~~] "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(27) [~~(21)~~] "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) [~~(22)~~] "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) [~~(23)~~] "Standards code" means the Texas Manufactured Housing Standards Code.

(30) [~~(23-a)~~] "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured

JCC

home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) [~~(24)~~] "Trust fund" means the manufactured homeowners' recovery trust fund.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership and location; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a

fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

SECTION 3. ~~Subsection~~ (a), Section 1201.053, Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Section 1201.054, Occupations Code, is amended to read as follows:

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, 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

JCC

which case only the requirements of Chapter 2001, Government Code, shall apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(c) [~~A rule as finally adopted must be published in the Texas Register and state the rule's effective date.~~

[~~(d)~~] A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier [~~later~~] than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.055, Occupations Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 6. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to

JCC

file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees [~~the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter~~].

SECTION 7. Section 1201.101, Occupations Code, is amended by amending Subsections (d), (f), and (g) and adding Subsection (f-1) to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may 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.

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person exempt from licensing [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 8. ~~Subsections~~ (a), (b), and (c), Section 1201.102, Occupations Code, are amended to read as follows:

(a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not~~

~~required to hold an individual license~~].

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems [~~Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor~~].

(c) An individual who [~~In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or broker's license or who is a related person of such a licensee[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 9. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must 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;

JCC

(2) all [~~the~~] trade names, and the names of all other business organizations, under [~~name by~~] which the applicant does business subject to this chapter [~~and, if incorporated~~], the name of each such business organization registered with the secretary of state, and the address of such [~~the~~] business organization; [~~and~~]

(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.

(a-1) All required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 10. Sections 1201.104 and 1201.105, Occupations Code, are amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete 20 hours of instruction in the law, including

JCC

instruction in consumer protection regulations. If the applicant is not an individual, the applicant must have at least one related person who meets this requirement [~~The director may not issue a license to that person until the course of instruction is completed~~].

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval. Classes must be live. Online or other electronic classes are not permitted.

(f) An applicant for an initial installer's license shall receive a license on a probationary basis. The person's probationary status shall remain in effect until such time as a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established

JCC

under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(h) [~~(f)~~] An examination must [~~may not~~] be a requirement of successful completion of any initial required course of instruction under this section [~~made a prerequisite of licensing~~].

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund.

(b) If a bond is filed, the bond must be issued by a company

JCC

authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each retailer's branch location;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur

unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a licensee or a business entity under which [~~corporation that is~~] a license holder conducts business; or

(2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption [~~The director may require a proper endorsement of the original bond~~].

SECTION 13. ~~Subsections~~ (a), (b), and (c), Sections 1201.113, Occupations Code, are amended to read as follows:

(a) The board shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for licensees [~~salespersons regulated~~] under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Attendance at an approved or administered continuing

JCC

education course described by Subsection (a) is a prerequisite to renewal of a license [~~A person who holds a salesperson's license must participate in certification and continuing education programs as provided by Subsection (e)~~].

(c) No test shall be given in relation to any continuing education program [~~To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution~~].

SECTION 14. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION; PROBATIONARY LICENSE. (a) Any license under this chapter other than a probationary [~~A manufacturer's, retailer's, broker's, or installer's~~] license is valid for [~~one year. A salesperson's license is valid for~~] two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

(b) If the director determines that a licensed salesperson or installer should receive a probationary license, the director may issue a probationary license on such terms and for such period as are deemed reasonable. The issuance of a license on a

JCC

probationary basis, any one or more of the specific terms of the probation, or the period of probation may be appealed before the 31st day after issuance of the probationary license by written notice to the director. If appeal is made, the director shall set the matter for a hearing before the State Office of Administrative Hearings, and all administrative proceedings relating to the issuance of the probationary license shall be deemed to be a contested case under Chapter 2001, Government Code. If no appeal is made, the probationary license shall be issued and shall remain in effect in accordance with the terms specified [~~The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable~~].

SECTION 15. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall 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

JCC

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 16. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 17. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 18. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) A deposit becomes a down payment upon execution of a binding written agreement. Thereafter, if the consumer exercises a right of rescission, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, without offset or deduction.

SECTION 19. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

(b) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 226.

SECTION 20. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 21. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by Section 1201.456, a [~~A~~] broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

SECTION 22. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) Unless the information provided for in Subsection (c) is provided electronically, the [~~The~~] department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

(e) The copies and lists to be provided under this section

may be provided electronically.

SECTION 23. Section 1201.162, Occupations Code, is amended to read as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) 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, the retailer [~~or agent~~] must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must 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 purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for~~

~~manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the~~

JCC

~~requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed,~~

JCC

~~rescind the contract without penalty or charge."~~

[~~(d)~~] A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer.

[~~(e)~~] Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

SECTION 24. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND

JCC

DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for in Subsection (b), the [~~The~~] consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) The consumer may modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required

waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

SECTION 25. Sections 1201.203, 1201.204, and 1201.205, Occupations Code, are amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership [~~and location at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect a lienholder recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director [~~or on another~~

~~document~~], the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien [~~the manufacturer's certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must [~~may~~] submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or

JCC

consented to by the consumer.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be evidenced by a board-approved form issued by the department setting forth [~~provide~~]:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where [~~county of this state in which~~] the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

dcc

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs - Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year." [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the board [~~director~~] requires.

SECTION 26. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the form of application for statement and ownership and location promulgated by the board [~~made by affidavit~~].

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, obtain a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a real property election has complied with the requirements of this subsection.

SECTION 27. Sections 1201.206, 1201.207, 1201.2075, 1201.2076, and 1201.208, Occupations Code, are amended to read as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) [~~(b)~~] At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement of ownership and location.

(b) [~~(c)~~] Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply

with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) [~~(d)~~] Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(d) If the seller accepts a trade-in manufactured home as part of the consideration for the sale of another manufactured home, the seller shall file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the trade-in manufactured home from the prospective buyer to the seller. The seller shall file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home that was sold by the seller. If the seller is a retailer, the seller shall indicate on the application for the issuance of the new statement of ownership and location whether the trade-in manufactured home has been added to the inventory of the retailer.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with

JCC

the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) When the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory, the seller shall also file with the department a statement from the tax assessor-collector that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the sale.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least $100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership and location the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP

JCC

TO ONE HUNDRED DOLLARS ($100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) When a properly completed notice of installation on the department's promulgated form is filed that relates to a secondary move, the notice must be accompanied by either:

(1) one true and correct copy of the original notice of installation; or

(2) a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser for the county in which the home was installed; the delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

(i-1) If the method specified in Subsection (i)(2) is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(j) In addition to providing each chief appraiser the monthly report required by Section 1201.220, the department shall, on request, provide the tax collector one copy of any requested reported notice of installation.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable

supporting proof as the director may require.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership and location until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the issuance in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the owner and each [~~of the home and to any~~] lienholder.

(c) Except with respect to any change in use, but subject to

JCC

Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative, or a court order.

((OK))

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

(e) Notwithstanding any other provision of this chapter, if

JCC

the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of

ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the

SCC

amount deducted from the security for the license [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 28. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Until a revocation or suspension has become final, the department shall place a hold on any activity relating to the statement of ownership and location other than the recordation of liens, including tax liens.

SECTION 29. ~~Subsection~~ (b), Section 1201.214, Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a [~~certified~~] copy of the statement of ownership and location issued under this subsection.

SECTION 30. ~~Subsection~~ (a), Section 1201.216, Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property

or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or of recordation of liens, including tax liens.

SECTION 31. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located. The notice must include the address where the home is currently located. If the person giving such notice knows that the person to whom the notice is being given no longer resides and is no longer receiving mail at such address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required

to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, [~~or~~] a lienholder, or a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, or tax assessor-collector seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

SECTION 32. Sections 1201.219 and 1201.220, Occupations Code, are amended to read as follows:

Sec. 1201.219. PERFECTION AND EFFECT OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a

retailer who fails to satisfy a perfected inventory lien [~~under the terms of the security agreement~~].

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

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien security agreement [~~by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and

marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home reported as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 33. The heading to Section 1201.251, Occupations Code, is amended to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD [~~DIRECTOR~~].

SECTION 34. Section 1201.251, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) The board [~~director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

SECTION 35. ~~Subsection~~ (a), Section 1201.252, Occupations

JCC

Code, is amended to read as follows:

(a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board [~~director~~] unless, after a hearing, the board expressly approves the proposed standard.

SECTION 36. Sections 1201.253, 1201.254, and 1201.255, Occupations Code, are amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board [~~director~~] must state its effective date [~~as provided by Section 1201.054~~].

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose.

(b) An installer may not install a 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 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 [~~director~~].

SECTION 37. ~~Subsection~~ (b), Section 1201.301, Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee [~~manufacturing facility~~].

SECTION 38. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 39. ~~Subsections~~ (a) and (b), Section 1201.302, Occupations Code, are amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

(b) On request, the department shall 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 the board [~~director~~]. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

SECTION 40. ~~Subsections~~ (a) and (b), Section 1201.351, Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

SECTION 41. Sections 1201.352 through 1201.355, Occupations Code, are amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE

MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

((OK))

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or

Jcc

retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, [~~or~~] retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the

manufacturer, [~~or~~] retailer, or installer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

SECTION 42. ~~Subsections~~ (a), (b), and (c), Section 1201.356, Occupations Code, are amended to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, [~~and~~] retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by [~~either~~] the manufacturer's, [~~or~~] retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, [~~or~~]

JCC

retailer, or installer an appropriate order for corrective action by the manufacturer, [~~or~~] retailer, or installer specifying a reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

SECTION 43. Sections 1201.357 and 1201.358, Occupations Code, are amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within a [~~the~~] period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in

writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's

JCC

new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Failure by the manufacturer, [~~or~~] retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If the director determines that the order was incorrect regarding that obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other~~].

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer, [~~or~~] retailer, or installer performing the obligation the right of indemnification against another party [~~the other~~].

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 44. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all [~~secondary~~] installations [~~not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the

requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of [~~the~~] installation.

SECTION 45. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

SECTION 46. ~~Subsection~~ (a), Section 1201.402, Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 47. ~~Subsection~~ (b), Section 1201.404, Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay

the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

SECTION 48. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment.

(g) The board by rule may 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. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

SECTION 49. Sections 1201.406 and 1201.407, Occupations Code, are amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before

the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes the director determines to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow [~~provide~~] a license holder 10 days [~~an opportunity~~] to comment on this [~~the~~] preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before

JCC

the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government Code.

(f) Any [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(c) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the~~] license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 50. ~~Subsections~~ (a) and (b), Section 1201.409, Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 51. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. INFORMATION ON RECOVERY FROM TRUST FUND [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for notifying [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund, shall post the information on the department's website, and shall make printed copies available on request.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 52. ~~Subsection~~ (b), Section 1201.451, Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

SECTION 53. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to

JCC

the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 54. ~~Subsection~~ (b), Section 1201.457, Occupations Code, is amended to read as follows:

(b) If a used manufactured home is reserved for business use or salvaged, a person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue a new [~~the~~] statement of ownership and location.

SECTION 55. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured

home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a [~~the~~] home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector [~~collector~~] may[~~:~~

[~~(1)~~] apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home[~~;~~

[~~(2) pay the applicable fee; and~~

[~~(3) recover that fee as part of the cost of the sale of the home~~].

(c) A [~~The~~] seal issued to a tax appraiser or [~~the~~] tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 56. The heading to Section 1201.461, Occupations Code, is amended to read as follows:

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

SECTION 57. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

JCC

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

SECTION 58. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

SECTION 59. ~~Subsection~~ (a), Section 1201.506, Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4,

Jcc

Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 60. Subchapter K, Chapter 1201, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit 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 the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 61. Sections 1201.551, 1201.552, and 1201.553, Occupations Code, are amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a

JCC

rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed [~~timely provide to a consumer an~~] application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had another license issued by this state revoked or suspended.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

Sec. 1201.552. [~~HEARING CONCERNING~~] LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any [~~an~~] order, decision, or determination of the board [~~director~~] is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 62. Section 1201.605, Occupations Code, is amended

JCC

to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a licensee [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the

date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

SECTION 63. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business

JCC

hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the 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 the department under this chapter, the director may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take

1 affirmative action, or both, to enforce compliance with this
2 chapter.
3 (b) The director may issue an order to any licensee to cease
4 and desist from violating any law, rule, or written agreement or to
5 take corrective action with respect to any such violations if the
6 violations in any way are related to the sale, financing, or
7 installation of a manufactured home or the providing of goods or
8 services in connection with the sale, financing, or installation of
9 a manufactured home unless the matter that is the basis of such
10 violation is expressly subject to inspection and regulation by
11 another state agency; provided, however, that if any matter
12 involves a law that is subject to any other administration or
13 interpretation by another agency, the director shall consult with
14 the person in charge of the day-to-day administration of that
15 agency before issuing an order.
16 (c) An order issued under Subsection (a) or (b) must contain
17 a reasonably detailed statement of the facts on which the order is
18 based. If a person against whom the order is issued requests a
19 hearing before the 31st day after the date the order is issued, the
20 director shall set and give notice of a hearing. The hearing shall
21 be governed by Chapter 2001, Government Code. Based on the findings
22 of fact, conclusions of law, and recommendations of the hearings
23 officer, the board by order may find that a violation has occurred
24 or has not occurred.
25 (d) If a hearing is not requested under Subsection (c)
26 before the 31st day after the date an order is issued, the order is
27 considered final and not appealable.

JCC

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. 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.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker,

dcc

installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's

JCC

1 petition for judicial review, a sworn statement that the person is
2 unable to meet the requirements of that subsection.
3 (e) If the person charged does not pay the penalty and does
4 not pursue judicial review, the department or the attorney general
5 may bring an action for the collection of the penalty.
6 (f) Judicial review of the order of the director assessing
7 the penalty is subject to the substantial evidence rule and shall be
8 instituted by filing a petition with a district court in Travis
9 County.
10 (g) If, after judicial review, the penalty is reduced or not
11 assessed, the director shall remit to the person charged the
12 appropriate amount, plus accrued interest if the penalty has been
13 paid, or shall execute a release of the bond if a supersedeas bond
14 has been posted. The accrued interest on amounts remitted by the
15 director under this subsection shall be paid at a rate equal to the
16 rate charged on loans to depository institutions by the New York
17 Federal Reserve Bank and shall be paid for the period beginning on
18 the date the assessed penalty is paid to the director and ending on
19 the date the penalty is remitted.
20 (h) A penalty collected under this section shall be
21 deposited in the trust fund.
22 (i) All proceedings conducted under this section and any
23 review or appeal of those proceedings are subject to Chapter 2001,
24 Government Code.
25 (j) If it appears that a person is in violation of, or is
26 threatening to violate, any provision of this chapter or a rule or
27 order related to the administration and enforcement of the

JCC

manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 64. ~~Subsection~~ (b), Section 2306.6022, Government Code, is amended to read as follows:

(b) The division shall make available on its website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

SECTION 65. Section 94.051, Property Code, is amended to read as follows:

Sec. 94.051. INFORMATION TO BE PROVIDED TO PROSPECTIVE TENANT. At the time the landlord receives an application from a prospective tenant, the landlord shall give the tenant a copy of:

(1) the proposed lease agreement for the manufactured home community;

(2) any manufactured home community rules; and

(3) a separate disclosure statement with the following prominently printed in at least 10-point type:

JCC

"You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, [~~if the recreational vehicle is tied to, affixed, or otherwise a permanent part of the premises,~~] the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice [~~if the landlord will not renew your lease and will require that you relocate your manufactured home or recreational vehicle~~]. During the applicable [~~60-day~~] period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal."

SECTION 66. Section 94.052(b), Property Code, is amended to read as follows:

(b) Except as provided by Section 94.204, regardless [~~Regardless~~] of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the date of the expiration of the lease if the landlord chooses [~~does~~] not to renew the lease. During the applicable [~~60-day~~] period, the tenant must pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

SECTION 67. Section 94.053(c), Property Code, is amended to read as follows:

(c) A lease agreement must contain the following information:

(1) the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;

(2) the lease term;

(3) the rental amount;

(4) the interval at which rent must be paid and the date on which periodic rental payments are due;

(5) any late charge or fee or charge for any service or facility;

(6) the amount of any security deposit;

(7) a description of the landlord's maintenance responsibilities;

(8) the telephone number of the person who may be contacted for emergency maintenance;

(9) the name and address of the person designated to accept official notices for the landlord;

(10) the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;

(11) the grounds for eviction as provided by Subchapter E;

(12) a disclosure of the landlord's right to choose not to renew [~~terminate~~] the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;

(13) a disclosure of any incorporation by reference of an addendum relating to submetering of utility services;

JCC

(14) a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law;

(15) if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and

(16) any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

SECTION 68. The heading to Section 94.204, Property Code, is amended to read as follows:

Sec. 94.204. NONRENEWAL OF LEASE [~~TERMINATION~~] FOR CHANGE IN LAND USE.

SECTION 69. Section 94.204(a), Property Code, is amended to read as follows:

(a) A landlord may choose not to renew [~~terminate~~] a lease agreement to change the manufactured home community's land use only if not later than the 180th day before the date the land use will change:

(1) [~~not later than the 120th day before the date the land use changes,~~] the landlord sends notice to the tenant, to the owner of the manufactured home if the owner is not the tenant, and to the holder of any lien on the manufactured home:

(A) specifying the date that the land use will change; and

(B) informing the tenant, owner, and lienholder, if any, that the owner must relocate the manufactured home; and

(2) [~~not later than the 120th day before the date the~~

~~land use changes,~~] the landlord posts in a conspicuous place in the manufactured home community a notice stating that the land use will change and specifying the date that the land use will change.

SECTION 70. ~~Subsections~~ (a) and (b), Section 11.432, Tax Code, are amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 [~~of this code~~], the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, 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 for the home is displayed on the computer website of the Texas Department of Housing and Community Affairs. The appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to determine whether a manufactured home qualifies for an exemption.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08. The consumer is entitled to obtain the homestead exemptions provided by Section

JCC

11.13 regardless of whether the owner has elected to treat the home as real property or personal property and regardless of whether the home is listed on the tax rolls with the real property to which it is attached or separately.

SECTION 71. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

SECTION 72. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured

home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer ownership [~~title~~] of a manufactured home until all tax liens perfected on the home that have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a [~~the~~] manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will

be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 73. (a) The following provisions of the

Occupations Code are repealed:

(1) Section 1201.059;

(2) Section 1201.112;

(3) ~~Subsections~~ (c), (d), (e), (f), and (g), Section 1201.113;

(4) Section 1201.163;

(5) ~~Subsections~~ (c) and (d), Section 1201.214; and

(6) Section 1201.408.

(b) Section 2306.6023, Government Code, is repealed.

SECTION 74. The changes in law made by this Act to Sections 94.051, 94.052, 94.053, and 94.204, Property Code, apply only to a lease agreement or a renewal to a lease agreement entered into after the effective date of this Act. A lease agreement or a renewal to a lease agreement entered into on or before the effective date of this Act is covered by the law in effect at the time the lease agreement or the renewal to the lease agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 75. The change in law made by this Act applies only to the sale, exchange, or lease-purchase of a new or used manufactured home on or after the effective date of this Act. A sale, exchange, or lease-purchase of a new or used manufactured home before the effective date of this Act is governed by the law in effect on the date of the sale, exchange, or lease-purchase, and the former law is continued in effect for that purpose.

SECTION 76. Except as otherwise provided by this Act, the changes in law made by this Act apply only to a license issued or renewed by the Texas Department of Housing and Community Affairs on

or after January 1, 2008. An issuance or renewal that occurs before January 1, 2008, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 77. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 78. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 79. This Act takes effect January 1, 2008.

President of the Senate

Speaker of the House

I certify that H.B. No. 1460 (1) was passed by the House on April 26 (2), 2007, by the following vote: Yeas 144 (3), Nays 0, 1 present, not voting (4); and that the House concurred in Senate amendments to H.B. No. 1460 on May 24 (5), 2007, by the following vote: Yeas 142 (6), Nays 4, 1 present, not voting (7).

Chief Clerk of the House

**** Preparation: CT31

I certify that H.B. No. 1460 (1) was passed by the Senate, with amendments, on May 22 (2), 2007, by the following vote: Yeas 31 (3), Nays 0 (4).

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT32

07 MAY 22 PM 5:08
HOUSE OF REPRESENTATIVES

SENATE AMENDMENTS

2nd Printing

By: Haggerty H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended by amending Subdivisions (5), (13), (20), and (23-a) and adding Subdivisions (1-a), (17-a), (18-a), and (25) to read as follows:

(1-a) "Affiliate" means a person who, with respect to a license holder, is under the common control of a third person who has the power to:

(A) directly or indirectly vote 25 percent or more interest in the license holder or an entity under the authority of the license holder;

(B) establish policy for the license holder, directly or through a related person; or

(C) hire, elect, or otherwise designate related persons for the license holder.

(5) "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(13) "Lease-purchase" means entering into:

(A) a lease contract for a manufactured home in which the lessor retains title; or

(B) another agreement that contains [~~containing~~] a provision conferring on the lessee an option to purchase a

manufactured home.

(17-a) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(18-a) "Related person" means a person who, directly or indirectly with respect to a license holder:

(A) participates in management, policy decisions, or day-to-day activities subject to this chapter; or

(B) has been found by the department in a final order to be a related person.

(20) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(23-a) "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(25) "Used manufactured home" means a manufactured home for which a statement of ownership and location has been issued or a manufactured home that has been occupied for any use, except that the term does not include:

(A) a manufactured home used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home;

(ii) was installed but never occupied;

(iii) had a statement of ownership and location issued with respect to the home; and

(iv) was taken back from the consumer because of a first payment default or an agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding a zoning law or any other law, unless prohibited by an ordinance or charter of a home-rule or general law municipality, if a manufactured home occupies a specific lot in a municipality, the owner of the manufactured home may move the manufactured home from that lot and place another manufactured home on the lot, provided that the replacement is a newer manufactured home and at least as large in living space as the manufactured home that was initially located on the lot.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in

order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Sections 1201.054(b) and (d), Occupations Code, are amended to read as follows:

(b) If requested by any member of the public, the board shall hold a hearing on any rule that the board proposes to adopt, other than a rule proposed for adoption under emergency rulemaking. The board must provide notice of a hearing under this subsection not later than the 10th day before the date the hearing is scheduled to be held. If a rule is adopted under emergency rulemaking, only the requirements of Chapter 2001, Government Code, apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(d) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to an installation standard [~~standards~~] may not take effect later than the 60th day after the date of publication of notice unless:

(1) the board determines that an earlier effective date is required to meet an emergency; and

(2) the installation standard is adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. [~~AMOUNT OF~~] FEES. (a) The board shall establish in reasonable amounts [~~the~~] fees [~~imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary~~] to cover any purpose under [~~the cost of administering~~] this chapter. If the department rules under this chapter provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) A fee imposed by this chapter or a rule under this chapter is:

(1) earned on the date the applicable payment is received by the department; and

(2) not subject to refund.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

SECTION 6. Sections 1201.101(d), (f), and (g), Occupations Code, are amended to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured

housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or the broker who sponsored the salesperson's application as required by Section 1201.103(d).

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person who is not required to hold a license as described by Section 1201.102 [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 7. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ an unlicensed person to assist the installer in performing installation functions if the licensed installer supervises the unlicensed person and maintains a list of all unlicensed persons employed. The director may issue an

order to prohibit a person who is not licensed as an installer from performing installation functions without the supervision of a licensed installer.

(b) A license holder may engage a person who is not licensed under this chapter but holds another license issued by this state to provide goods and services in accordance with that license, including the installation or connection of air conditioning, plumbing, or electrical systems.

(c) A person who [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not required to hold an individual license.~~

[~~(b) Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor.~~

[~~(c) In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or a broker's license or who is a related person of that license holder[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 8. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (c-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director a

license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who is anticipated to be a related person at the time the license is issued;

(2) each [~~the~~] trade name and the name of each business organization [~~name~~] by which the applicant does business under this chapter and[~~, if incorporated, the name registered with the secretary of state and~~] the address of each [~~the~~] business organization; [~~and~~]

(3) the dates on which the applicant became the owner and operator of the business; and

(4) each location to which the license will apply.

(c-1) The applicant shall maintain, at the applicant's principal office or another location designated by the applicant within this state, all records required of the applicant under this chapter.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 9. Section 1201.104, Occupations Code, is amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, or rebuilder's license, a person who was not licensed or registered with the

department or a predecessor agency on September 1, 1987, must, within the year preceding the date of the application for the person's initial license under this chapter, attend and successfully complete 20 hours of instruction in the law, including instruction in consumer protection regulations. If the applicant is not an individual, the applicant must employ at least one related person who meets the requirement described by this subsection.

(b) Each individual who is a related person of the applicant must attend and successfully complete 20 hours of instruction in the law described by Subsection (a). The individual must complete the next course of instruction offered after the date on which the individual becomes a related person. The individual is automatically barred from acting as a related person until the individual successfully completes the course of instruction required by Subsection (a).

(c) An applicant for a salesperson's license must successfully complete the next course of instruction offered after the date the person is licensed. A salesperson who fails to successfully complete the course of instruction described by Subsection (a) will automatically have the person's license suspended until the person successfully completes the course of instruction.

(d) [~~The director may not issue a license to that person until the course of instruction is completed.~~

[~~(b)~~] The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules regarding the content of the

course of instruction and the requirements for board approval of the course of instruction, including a rule requiring the course to be presented live and a rule prohibiting any electronic transmission of the course.

(f) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(g) Successful passage of an [~~(f) An~~] examination must [~~may not~~] be a prerequisite for the successful completion of an initial course of instruction required under this section, but may not be a prerequisite for continuing education courses [~~made a prerequisite of licensing~~].

SECTION 10. Section 1201.105, Occupations Code, is amended to read as follows:

Sec. 1201.105. SECURITY REQUIRED. (a) The department may

not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund except for any amount that is due directly to the retailer under this chapter.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department is unable to obtain timely reimbursements from a surety or the department determines that a surety has experienced a deterioration in its financial condition, the board may direct the director to discontinue the acceptance of bonds issued by that surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each additional branch location of a retailer;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) The director may increase the fee amounts under Subsection (a) with respect to the issuance of an initial, renewal, or subsequent license based on an application described by Section 1201.118.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a license holder or a business entity under which the [~~corporation that is a~~] license holder conducts business; or

(2) location.

(b) A license holder shall notify the department not later than the 10th day before the date of a change described in Subsection (a).

(c) The license holder shall provide to the department [~~director may require~~] a proper endorsement of the original bond to avoid an interruption in the application of the bond to the license.

SECTION 13. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.1125 to read as follows:

Sec. 1201.1125. PROBATIONARY INSTALLER'S OR SALESPERSON'S LICENSE. (a) An applicant for an initial installer's license receives the license only on a probationary basis until the department inspects a sufficient number of installations performed by the installer and fails to find an identified material violation

of this chapter or the rules adopted under this chapter. The board, with the advice of the advisory committee established under Section 1201.251, shall adopt rules to determine the number of successful installations required for termination of the probationary period under this subsection.

(b) The board shall adopt rules under which the director may elect to issue a renewal installer's license or an initial or renewal salesperson's license on a probationary basis.

(c) If the director determines that a salesperson or installer should receive a probationary license under Subsection (b), the director may issue the probationary license on the terms and for the period the director considers reasonable in accordance with the rules adopted under that subsection.

(d) A person who is issued a probationary license under Subsection (b) may appeal by written notice to the director the terms of the license or the period for which the license is issued not later than the 30th day after the date the license is issued. If the license holder appeals under this subsection, the director shall set the matter for a hearing to be conducted by the State Office of Administrative Hearings. The hearing and any related administrative proceedings are considered to be a contested case subject to Chapter 2001, Government Code.

(e) If the license holder does not appeal as permitted by Subsection (d), the probationary license remains in effect for the period and in accordance with the terms specified in the license.

SECTION 14. Section 1201.113, Occupations Code, is amended to read as follows:

Sec. 1201.113. [~~CERTIFICATION AND~~] CONTINUING EDUCATION PROGRAMS. (a) The department [~~board~~] shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for license holders [~~salespersons regulated~~] under this chapter. A continuing education program must:

(1) be at least six hours in length; and

(2) include the current rules of the department under this chapter and other matters the department considers relevant.

(b) As a prerequisite for license renewal, a license holder must attend a [~~A person who holds a salesperson's license must participate in certification and~~] continuing education course approved or administered by the department under this section [~~programs as provided by Subsection (c)~~].

[~~(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution.~~

[~~(d) To be considered for a contract under Subsection (c), an organization or institution must submit an application. The board may charge an application fee to be set by the board in an amount necessary to pay the costs of processing the application.~~

[~~(e) A salesperson must complete eight hours of certification and continuing education programs not later than the 90th day after the date the salesperson's initial license is~~

~~issued. To renew a salesperson's license, a salesperson regulated under this chapter must complete an additional eight hours of certification and continuing education programs for each renewal. The programs must be presented by a board-approved organization or educational institution and must include instruction in applicable state and federal law, consumer protection regulations, and ethical standards.~~

[~~(f) The department shall issue an appropriate certificate to a person who completes a certification program and participates in a continuing education program under this section.~~

[~~(g) The board shall suspend the license of a salesperson regulated under this chapter who does not complete the programs as required by this section. The board shall reinstate the license on the salesperson's completion of the programs.~~]

SECTION 15. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION. A license issued under this chapter, other than a probationary license, [~~(a) A manufacturer's, retailer's, broker's, or installer's license is valid for one year. A salesperson's license~~] is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

[~~(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall~~

~~prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

SECTION 16. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. ADDITIONAL PROCEDURES FOR CERTAIN LICENSE APPLICATIONS. The board shall adopt rules providing for the additional review and scrutiny of an initial, renewal, or subsequent license application that involves an applicant or a related person who has previously:

(1) in a final order issued by the department, been found to have:

(A) participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license; or

(B) engaged in activity subject to this chapter without holding the required license;

(2) caused the trust fund to incur unreimbursed payments or claims; or

(3) failed to fulfill the terms of a final order, including the payment of any assessed administrative penalties.

SECTION 17. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a

specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 18. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 19. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) Not later than the 15th day after the date a consumer exercises the consumer's right of rescission as provided by Section 1201.1521, the retailer shall refund to the consumer all money and other consideration received from the consumer without offset or deduction if the retailer and the consumer entered into a binding written agreement under which the consumer submitted to the retailer a deposit that was a down payment for the home.

SECTION 20. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge. The right of rescission applies only to a transaction between a retailer and a consumer.

(b) Subject to rules adopted by the board, a consumer may modify or waive for a bona fide personal financial emergency the consumer's right to rescind the contract without penalty or charge. The rules adopted by the board shall, to the extent practicable, be modeled on the federal rules for the modification or waiver of a right of rescission under Title 12, Code of Federal Regulations, Part 226.

SECTION 21. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the person's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 22. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer unless the seller is a consumer in a transaction as provided by Section 1201.456.

(c) A broker in a transaction under this chapter shall provide to a person who engages the broker's services a written disclosure of any interest that the broker represents in the transaction.

(d) A broker may assist a person who is offering or otherwise engaging in the sale, exchange, or lease-purchase of a manufactured home only if that person holds a license required by this chapter.

SECTION 23. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) The copies of permits and the lists and information required under this section may be provided electronically.

(e) The department shall pay the reasonable cost of providing the materials required [~~copies or the list and information~~] under Subsection (b) or (c) unless the materials are provided electronically.

SECTION 24. Sections 1201.162(a) and (e), Occupations Code, are amended to read as follows:

(a) Before the completion of a credit application or not later than one day before entering into an agreement for a sale, exchange, or lease-purchase that will not be financed, the retailer [~~or agent~~] must provide to the consumer a written disclosure in a form prescribed by rules adopted by the board. The disclosure form shall:

(1) be printed in at least 12-point type;

(2) address matters of concern relating to the costs and obligations that may be associated with manufactured home ownership, matters to be considered in making any financing decisions, related costs that may arise in acquiring a manufactured home, and other matters the board considers appropriate to promote informed decision-making by the consumer with respect to the acquisition and ownership of a manufactured home; and

(3) conspicuously disclose the consumer's right of rescission. [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers,~~

~~retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have~~

~~mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~]

(e) Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a

subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer's execution of a signed receipt of a copy of the notice required by Subsection (a) constitutes conclusive proof that the notice was delivered. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission immediately ceases on the date the lien is filed with the department.

SECTION 25. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. The consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the contract, the consumer may modify or waive the consumer's right to rescind the contract or the waiting period provided by Subsection (a) if the consumer

determines that the acquisition of the manufactured home is needed for a bona fide personal financial emergency. If the consumer has a bona fide personal financial emergency that requires the immediate acquisition of the manufactured home, the consumer shall give the retailer a dated written statement that describes the personal financial emergency, specifically modifies or waives the waiting period or the right of rescission, as applicable, and bears the signature of each consumer who is entitled to the waiting period or right of rescission. On receipt of the written statement described by this subsection, the retailer shall immediately provide to the consumer all of the disclosures required by this subchapter and engage in the transaction without reference to the required waiting period or the right of rescission.

(c) A form printed for the purpose of Subsection (b) may be used only:

(1) with respect to a manufactured home that is to be located in an area that has been declared by the governor to be a disaster area as provided by Section 418.014, Government Code; and

(2) until the first anniversary of the date the governor declared the area to be a disaster area.

SECTION 26. Section 1201.203, Occupations Code, is amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership and location [~~at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect the holder of a lien [~~a lienholder~~] recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

SECTION 27. Section 1201.204, Occupations Code, is amended to read as follows:

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the board [~~director~~] or on another document, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the board [~~director~~], each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory lien [~~the manufacturer's~~

~~certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer shall [~~may~~] submit the manufacturer's certificate for that home to the department. If an application for an initial statement of ownership and location is made without the required manufacturer's certificate and the retailer does not produce the certificate as required by this subsection, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to that effect to each party currently reflected in the department's records as having a recorded lien on the inventory of that retailer. Failure to include the manufacturer's certificate with an application described by this subsection does not impair a consumer's ability to obtain, on submitting an otherwise complete application, a statement of ownership and location free from a lien other than a lien created by or consented to by the consumer.

SECTION 28. Section 1201.205, Occupations Code, is amended to read as follows:

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be issued on a board-approved form and must provide:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and address of the new owner, if the owner's address is different from the address of the home;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address of the real property on [~~the county of this state in~~] which the home has been [~~is~~] installed for occupancy, including the name of the county and, if different from the address of the home, the address of the new owner of the home;

(6) in chronological order of recordation, the date of each lien other than a tax lien on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens which must state:

"On January 1st of each year, a tax lien is placed on a manufactured home in favor of each taxing unit with taxing authority over the real property on which the home is located. To enforce that lien, the lien must be recorded with the manufactured housing division of the Texas Department of Housing and Community Affairs, as provided by law. You may check that division's records through its Internet website or contact the division to identify any recorded tax liens. To identify the amount of unpaid tax liability, contact the taxing unit for the county in which the home

is located on January 1st of that year" [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) [~~the location of the home;~~

[~~(10)~~] a statement of whether the owner has elected to treat the home as real property or personal property;

(10) [~~(11)~~] statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(11) [~~(12)~~] any other information the board [~~director~~] requires.

SECTION 29. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsections (i) and (j) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the board-approved form [~~made by affidavit~~].

(i) Notwithstanding Subsection (d), if a mortgage loan made in connection with a transaction under this chapter is to be secured by real property that includes the manufactured home, the mortgage loan is funded, and a deed of trust covering the real property and all improvements on the real property is recorded, but the licensed

title company or attorney who closed the loan failed to complete the conversion of the manufactured home to real property in accordance with this chapter, the holder or servicer of the mortgage loan at any time may apply for a statement of ownership and location, including making an election in the application with respect to real property status, and may obtain from the department a certified copy of the statement of ownership and location if, not later than the 60th day before the date of an application for a statement of ownership and location electing real property status, the record owner of the home, as reflected in the department's records, has been provided written notice by certified mail at:

(1) the physical address of the location of the home and, if the address of the record owner is different from that of the location of the home, the mailing address of the owner; and

(2) any other location known or believed after a reasonable inquiry by the holder or servicer of the loan to be an address at which the owner may receive mail or an address of record.

(j) The board by rule shall require evidence that the mortgage loan holder or servicer applying for a real property election has complied with the requirements of this section.

SECTION 30. Section 1201.206, Occupations Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections (g) through (i) to read as follows:

(b) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed and submitted. The consumer

shall return the completed application to the retailer. The retailer shall surrender to the department the manufacturer's certificate in accordance with Section 1201.204 and the manufacturer's statement of origin at the same time that the retailer submits the application for the first statement of ownership and location.

(c) Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(d) Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with this subsection, the consumer may apply for the issuance of a statement of ownership and location.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) If the seller accepts a used manufactured home as part

of the consideration for the sale of another manufactured home, the seller shall provide to the department a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the used manufactured home from the previous owner of the used manufactured home to the seller at the same time that the seller files the completed application for the issuance of a statement of ownership and location for the manufactured home that was sold by the seller in that transaction. If the seller is a retailer, on the application for the issuance of the new statement of ownership and location for the used manufactured home the seller shall indicate whether that home has been added to the inventory of the retailer.

(h) At the time the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that has not been added to a retailer's inventory, the seller shall file with the department a written statement from the tax assessor-collector that there are no personal property taxes on the manufactured home that have accrued within the 18-month period preceding the date of the transaction in which the seller acquired the used manufactured home.

(i) If a person who sells a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee within the applicable period, the department may assess an additional fee of not less than $100 against the seller. The department may enforce the collection of the additional fee from the seller through a judicial

proceeding. The department shall place on the application for the statement of ownership and location the following statement in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF AT LEAST ONE HUNDRED DOLLARS ($100). A LATE APPLICATION CANNOT BE PROCESSED UNTIL THE FEE DESCRIBED BY THIS PARAGRAPH IS PAID IN FULL."

SECTION 31. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2061 to read as follows:

Sec. 1201.2061. NOTICE OF INSTALLATION. (a) A notice of installation must be filed with the department on the board's prescribed form. If the installation involves a secondary relocation of the home, the notice must be accompanied by:

(1) a copy of the original notice of installation; or

(2) certification that a copy of the original notice of installation has been provided to the chief appraiser of the county in which the home is installed.

(b) The notice required by Subsection (a) may be delivered by certified mail or by electronic transmission of the document in a commonly readable format.

(c) If the method to report the installation of a relocated home is the method specified by Subsection (a)(2), the department may adopt a discounted fee for filing the notice of installation.

(d) In addition to providing each tax assessor-collector with the monthly report required by Section 1201.220, the

department shall, on request, provide a tax assessor-collector with one copy of any reported notice of installation.

SECTION 32. Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.2062 to read as follows:

Sec. 1201.2062. DIFFICULTY IN DOCUMENTING CHAIN OF TITLE. Notwithstanding any provision in this chapter, if a person acquires a manufactured home and the owner of record and an intervening owner of a lien on the home cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if that person submits an application for the statement and provides:

(1) a supporting affidavit describing the chain of title and the status of any liens; and

(2) any reasonable supporting proof that the director may require.

SECTION 33. Section 1201.207, Occupations Code, is amended to read as follows:

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) As soon as practicable after June 30 of each year, the

department shall, except for applications relating to new manufactured homes and applications accompanied by tax certificates, discontinue its issuance of statements of ownership and location until all tax liens filed with the department before June 30 in relation to manufactured homes are processed and recorded or rejected. The department shall post on its Internet website a notice as to the anticipated date on which the department intends to begin issuing statements of ownership and location again and the anticipated date on which the department intends to again comply with the period for processing applications prescribed by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the statement of ownership and location in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the record owner of the home and to each [~~any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, [~~either~~] in writing, [~~or~~] by operation of law, or by the department's procedures provided by Section 1201.2062 to document ownership and lien status. After the department has issued a statement of ownership and location, the

department may not alter the record of the ownership or lien status of a manufactured home for activity that occurred before the issuance of the statement of ownership and location unless the department:

(1) obtains the written permission of the owner of record for the manufactured home or a court order; or

(2) determines that an exception is necessary in accordance with rules adopted by the board.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a retailer in the ordinary course of business, regardless of whether a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without the need to provide any notice and is entitled to ownership of the manufactured home free of all liens and entitled to a statement of ownership and location to that effect on payment by the consumer of the purchase price to the retailer. If an existing lien on the manufactured home is perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

SECTION 34. Section 1201.2075, Occupations Code, is amended to read as follows:

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

SECTION 35. Section 1201.2076, Occupations Code, is amended to read as follows:

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.2062, the [~~The~~] department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is

released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) The department may rely on a commitment for title insurance, a title insurance policy, or an attorney's title opinion to determine that a lien on real property has been released as required by Subsection (a).

SECTION 36. Section 1201.208, Occupations Code, is amended to read as follows:

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) A license holder who sells, exchanges, or lease-purchases a new manufactured home to a consumer shall pay the required sales and use tax on the home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If a license holder sells, exchanges, or lease-purchases a home without paying the required sales and use tax, the payment shall be made from the trust fund for an amount not more than the maximum amount available in bond or other security required by Section 1201.106 for the person's license. The trust fund may file with the license holder's surety a claim for reimbursement in the amount deducted from the trust fund under this section [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 37. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as

follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If an appeal is not timely made, the revocation or suspension described in the notice becomes final.

(d) The department shall prohibit any activity with respect to the statement of ownership and location other than the recordation of liens, including tax liens, until a revocation or suspension has become final.

SECTION 38. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a certified copy of the statement of ownership and location issued under this subsection.

SECTION 39. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or

salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or recordation of liens, including tax liens.

SECTION 40. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax assessor-collector for each taxing unit that imposes ad valorem taxes on the real property on which the home is located. The notice must include the physical address at which the home is currently located. If the person giving notice knows that the person for whom the notice is intended does not reside and is no longer receiving mail at that address, a reasonable effort shall be made to locate the person for whom the notice is intended and to give the person notice at an address where the person receives mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the owner of the home or a lienholder

may enter the real property on which the home is located to remove the home. The real property owner must disclose to the owner or lienholder seeking to remove the home the location of the home and must grant that person reasonable access to the home. A person who removes the home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns or previously owned an interest in the manufactured home, or that person's affiliate or related person:

(1) owns the real property on which the home is located; or

(2) claims that the home is abandoned.

SECTION 41. Sections 1201.219(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien under the terms of the security agreement.

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on the required [~~a~~] form [~~provided by the department~~]. The form must require the disclosure of the original dollar amount of the lien as well as the name and address of the

person in whose name the manufactured home is listed on the tax roll. The department on its Internet website shall disclose the date of each lien filing and the original amount of the lien claimed in each filing and shall provide a notice that the amount shown does not include additional amounts such as interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) [~~recordation of a lien with the department~~] is notice to all persons that the lien exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. The tax assessor-collector for any taxing unit with the power to tax the manufactured home shall file any appropriate tax lien on the home. A single filing by a tax assessor-collector is a filing for each taxing unit for which the tax assessor is empowered to collect.

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien [~~security agreement by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

SECTION 42. Section 1201.220, Occupations Code, is amended to read as follows:

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax

assessor-collector in this state a monthly report that, for each manufactured home reported in the notice of installation to the department as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 43. Section 1201.251, Occupation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) In accordance with Subsection (d), the board [~~The director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) To ensure that the standards and requirements adopted under this section are recommended by qualified persons, the board may adopt rules that provide for the approval of foundation systems and devices by licensed engineers. A generic installation standard adopted by rule shall first be reviewed by an advisory committee established by the board. The advisory committee must include one or more engineers in addition to representatives of manufacturers, installers, and manufacturers of stabilization systems or devices. The advisory committee shall submit a report to the board providing each comment and concern regarding any proposed rule. The members of the committee are not personally liable for providing the advice to the board.

SECTION 44. Section 1201.253, Occupations Code, is amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

SECTION 45. Section 1201.255, Occupations Code, is amended to read as follows:

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued under this chapter. An uninstalled manufactured home may not be occupied for any purpose [~~issued by the director~~].

(b) An installer may not install a manufactured home at a location that has evidence of ponding, run-off under heavy rains, or bare uncompacted soil unless:

(1) the installer obtains the owner's signature on a form adopted by 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

(2) the owner accepts that risk in writing.

SECTION 46. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect the [~~a manufacturing~~] facility of a license holder.

SECTION 47. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY STATE AGENCIES AND LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 48. Section 1201.302(a), Occupations Code, is amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

SECTION 49. Subchapter G, Chapter 1201, Occupations Code, is amended by adding Section 1201.306 to read as follows:

Sec. 1201.306. ENGINEER APPROVAL OF INSPECTION COMPONENTS. In the inspection of the installation of a manufactured home under this chapter the department may use or permit the use of a device or procedure that has been reviewed and approved by a licensed engineer if the use complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 50. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship, other than cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the date of closing of the consumer's acquisition of a new home that has already been installed, as applicable.

SECTION 51. Section 1201.352, Occupations Code, is amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON NEW HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship, except as provided by Subsection (a-1).

(a-1) The retailer may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the date of the:

(1) [~~date of~~] initial installation of the home at the consumer's homesite; or

(2) closing of the consumer's acquisition of the home

if the home has already been installed.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the date of installation of the home, the retailer shall deliver to the consumer a copy of the warranty given to the retailer by the licensed installer.

SECTION 52. Section 1201.353, Occupations Code, is amended to read as follows:

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is considered to be notice to the manufacturer, [~~or~~] retailer, or installer beginning on the third business day after the date the department forwards to the applicable license holder the notice by regular mail or by electronic mail as a scanned copy of the notice.

SECTION 53. Section 1201.354, Occupations Code, is amended

to read as follows:

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

SECTION 54. Section 1201.355, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer or retailer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(d) Notwithstanding any other provision of this section, the department may perform a home inspection at any time if the

department determines that there is a reasonable possibility that a condition of the manufactured home may present an imminent threat to public health or safety. The department shall obtain an inspection search warrant if required by other law.

SECTION 55. Section 1201.356, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (f), (g), and (h) to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, installer, and retailer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by either the manufacturer's, installer's, or retailer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, installer, or retailer an appropriate order for corrective action by the manufacturer, installer, or retailer, specifying a reasonable period for completion of the corrective action.

(f) The installer and retailer are responsible for the warranty of installation on new HUD-code manufactured homes. If the department determines that a complaint is covered by the installation warranty, the director shall issue to the installer an order requiring corrective action. If the installer fails to perform the corrective action, the installer is subject to the provisions of Section 1201.357 and the director shall issue the

same order for corrective action to the retailer with an additional period, not to exceed 10 days, allowed for performing the corrective action, unless additional time for compliance is needed, as established by a showing of good cause by the retailer.

(g) If the retailer is required to perform the corrective action under Subsection (f) because of the installer's failure to comply with the director's order, the retailer may seek reimbursement from the installer.

(h) Notwithstanding Subsection (f), the period for performing the required warranty work may be shortened by the director as much as reasonably possible if the warranty work may be necessary to address an imminent threat to public health or safety.

SECTION 56. Section 1201.357, Occupations Code, is amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within the period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should

not be suspended or revoked. The consumer may express the consumer's views at the informal meeting. Following the meeting, the director shall:

(1) resolve the matter by agreed order;

(2) dismiss the matter if no violation is found to have occurred; or

(3) institute an administrative action that may include suspension, revocation, assessment of administrative penalties, or any combination of those actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

SECTION 57. Section 1201.358, Occupations Code, is amended to read as follows:

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; ADDITIONAL ORDERS ISSUED BY DIRECTOR [~~HEARING RESULTS~~]. (a) Failure by the manufacturer, [~~or~~] retailer, or installer, as applicable, to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If~~] the director determines that the order issued under Section 1201.357 was incorrect regarding the warranty [~~that~~] obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other.

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer or retailer performing the obligation the right of indemnification against the other.

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 58. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For each installation [~~all secondary installations not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give [~~the manufactured home owner~~] a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The retailer who is responsible for the installation of a new HUD-code manufactured home shall give the manufactured home owner the warranty for the installation. If the retailer subcontracts the installation to a licensed installer, the retailer and installer are jointly and severally liable for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer has no obligation or liability under a warranty for a new manufactured home for any defect described in a written notice received from the consumer more than one year [~~two years~~] after the date of

acquisition of a home that has already been installed, as applicable, or the date of the installation.

SECTION 59. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. ADDITIONAL CORRECTIVE ACTION AUTHORITY. Notwithstanding the limitations and terms of a warranty, if during any inspection the department identifies an aspect of an installation that does not conform to the applicable requirements, the director may:

(1) order the license holder who performed the installation to correct the defect; or

(2) if that license holder is no longer licensed, issue an order directing another licensed installer to correct the installation and reimburse the installer from the trust fund for the costs of that corrective action.

SECTION 60. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 61. Section 1201.404(b), Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose valid claim is the earliest by date and time.

SECTION 62. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable and the director may not pay attorney's fees or actual damages:

(1) to reimburse an affiliate or related person of a license holder, unless the director issues an order under Section 1201.358(c);

(2) to correct a defect that is solely cosmetic in nature; or

(3) to address matters not provided for in this subchapter, unless those matters involve:

(A) a breach of warranty;

(B) a failure to return or apply in accordance with a written agreement money received from a consumer or to which the consumer was entitled; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home, including an agreement for goods or services involving steps, air conditioning, access to utilities, or sewage and wastewater treatment.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment from the trust fund, including payments made under Section 1201.358, and may require consumers making claims that may be subject to reimbursement from the trust fund to provide reasonable estimates establishing those costs. The rules adopted by the board may specify procedures and requirements the board considers necessary and advisable for the

administration of the trust fund.

SECTION 63. Section 1201.406, Occupations Code, is amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond related to the license; [~~and~~]

(2) investigate the claim;

(3) issue a preliminary determination on the claim; and

(4) give the consumer, the license holder, and any surety related to the license:

(A) an opportunity to resolve the matter by agreement; or

(B) the opportunity to dispute the preliminary determination.

(c) If the matter is not resolved as provided by Subsection (b)(4) before the 30th day after the date the preliminary determination is issued, the preliminary determination

automatically becomes final and the director shall make demand on the surety or deduct any payable amount of the claim from the license holder's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

SECTION 64. Section 1201.407, Occupations Code, is amended to read as follows:

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that had been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes in the determination the director considers to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall provide a license holder a period of 10 days [~~an opportunity~~] to comment on the preliminary determination.

(d) After considering the comments made in relation to the preliminary determination, if any, the director shall issue a final determination.

(e) Not later than the 10th day after the date of its issuance, the final determination may be appealed to the board by giving written notice to the director, who shall submit the matter to the board for consideration at the next meeting for which the matter can be publicly posted in the manner as required by Chapter 551, Government Code.

(f) Any license [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the license~~] holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 65. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 66. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. CONSUMER INFORMATION [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund. The director shall make the information available to consumers:

(1) on the department's Internet website; and

(2) in hard-copy format to any member of the public who submits a request for the information.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 67. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location. If the seller or transferor fails to forward to the purchaser or transferee the necessary, executed documents as required by this subsection, the purchaser or transferee may apply directly for the

issuance of a statement of ownership and location.

SECTION 68. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 69. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) A person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow another [~~any~~] person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue the

statement of ownership and location.

SECTION 70. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If the home does not have a serial number, seal, or label, a tax appraiser or a [~~the~~] tax assessor-collector [~~collector~~] may:

(1) apply to the department for a seal;

(2) pay the applicable fee; and

(3) recover that fee as part of the cost of the sale of the home.

(b-1) The tax appraiser or the tax assessor-collector assumes full responsibility for affixing to the home a seal issued to the tax appraiser or the tax assessor-collector under Subsection (b).

(c) A [~~The~~] seal issued to the tax appraiser or the tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 71. Section 1201.461, Occupations Code, is amended

by adding Subsections (g) and (h) to read as follows:

(g) A political subdivision of this state that identifies a manufactured home within its jurisdiction as a salvaged manufactured home may impose with respect to that home an inspection, a requirement for corrective action, or other requirements that would apply if the home were not a salvaged manufactured home.

(h) A license holder may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvaged and that has not been repaired as required by this chapter and the rules adopted under this chapter. The sale, exchange, lease-purchase, or installation of a salvaged manufactured home for use as a dwelling constitutes an imminent threat to public health or safety. A license holder that participates in a sale, exchange, lease-purchase, or installation in violation of this section:

(1) is subject to the imposition of penalties and other sanctions provided for in this chapter; and

(2) commits an offense punishable as a Class B misdemeanor.

SECTION 72. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a

licensed engineer and delivering that written approval to the department.

SECTION 73. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 74. Section 1201.509, Occupations Code, is amended to read as follows:

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer[~~, salesperson, or agent of the retailer~~] may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

SECTION 75. Subchapter K, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF CERTAIN USED MANUFACTURED HOMES; OCCUPANCY OF HOMES PRIOR TO CLOSING. (a) A retailer may not sell or otherwise transfer a used manufactured home acquired in exchange for another manufactured home before completing the transaction involving the other manufactured home.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale, exchange, or lease-purchase before the closing of any required financing unless

the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 76. Section 1201.551, Occupations Code, is amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) repeatedly failed to file with the department completed applications [~~timely provide to a consumer an application~~] for statements [~~a statement~~] of ownership and location in the time and manner required by this chapter [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had any other license issued by this state revoked or suspended by this state or a political subdivision or agency of this state.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which a demand for reimbursement is made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

SECTION 77. Section 1201.552, Occupations Code, is amended to read as follows:

Sec. 1201.552. HEARING CONCERNING LICENSE. The director may issue an order to revoke, suspend, or deny a new or renewal license. If not later than the 30th day after the date the order is issued the person against whom that order is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the order

becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

SECTION 78. Section 1201.553, Occupations Code, is amended to read as follows:

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of an order, decision, or determination of the board or director is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 79. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter or the rules adopted under this chapter, or a final order adopted or issued as provided by this chapter, an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a license holder [~~retailer~~] who fails to provide information to a consumer as

required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) If not later than the 30th day after the date the person receives notice of an administrative penalty the person against whom the penalty is issued requests a hearing by giving written notice to the director, the director shall set a hearing to be conducted by the State Office of Administrative Hearings. If appeal is not timely made, the administrative penalty becomes final. The hearing and any related administrative proceeding is a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision related to the case.

SECTION 80. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. An order issued by the director under this chapter

automatically becomes a final order if the order is not appealed before the 30th day after the date the order is issued. If the person to whom the order is issued files a written request for a hearing with the director, the order is considered to have been appealed and is a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings. The board shall issue a final order after receiving and reviewing the proposal for decision related to the case.

Sec. 1201.608. INSPECTION OF LICENSE HOLDER RECORDS. (a) The department may inspect a license holder's records during normal business hours without advance notice if the director determines that an inspection is necessary to:

(1) prevent a violation of this chapter;

(2) protect a consumer or another license holder; or

(3) assist another state or federal agency in an investigation.

(b) The director may request or issue a subpoena for the license holder's records.

(c) If the director determines that it is appropriate to detect and address suspected violations of this chapter, the department may carry out an undercover investigation in accordance with board-adopted rules.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. CRIMINAL PENALTY FOR PERFORMING ACTION WITHOUT PROPER LICENSE. (a) A person who is not required to hold a license under this chapter commits an offense if the person performs an act that requires a license under this chapter.

(b) An offense under this section is a Class B misdemeanor. A subsequent conviction for an offense under this section is punishable as a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the director has reasonable cause to believe that a person licensed under this chapter has or intends to violate a provision of this chapter or the rules adopted under this chapter, to enforce compliance with this chapter the director may issue to the license holder without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both.

(b) The director may issue an order to a license holder to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to the violation if the license holder in any way is performing an action that relates to the sale, financing, or installation of a manufactured home or relates to providing goods or services in connection with the sale, financing, or installation of a manufactured home, provided that if the matter involves a law that is subject to administration or interpretation by a state agency other than the department, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing the order. The director may not issue an order under this subsection with respect to a matter that is subject to inspection and regulation by a state

agency other than the department.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom the order is issued requests a hearing, the director shall set and give notice of a hearing. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 30th day after the date on which an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided under law, the director, after the expiration of the 10-day period following the date the director provides notice to the person, may, without a prior hearing, suspend the person's license. The suspension continues until the person has complied with the cease

and desist order or paid the administrative penalty. During the period of suspension:

(1) the person whose license has been suspended may not perform an act that requires a license under this chapter; and

(2) all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom the compensation was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) must be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided notice of the time and place of the hearing not later than the third day before the hearing is scheduled to occur.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may prohibit the person from being a related person of a license holder unless the person obtains the prior written consent of the director.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions.

(b) If the person charged with a violation accepts the director's determination with respect to an administrative penalty, the director shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(c) Not later than the 30th day after the date on which the director's determination becomes final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the facts of the violation, the amount of the penalty, or both the facts of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the director's order assessing the penalty is subject to the substantial evidence rule.

(g) If, after judicial review, the penalty is reduced or not assessed, the director as applicable shall remit to the person charged the appropriate amount, including accrued interest if the penalty has been paid, or shall execute a release of any supersedeas bond that was posted. The accrued interest on amounts remitted by

the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the division director, may institute an action for injunctive relief to restrain the person from continuing the violation and for a civil penalty of not more than $1,000 for each violation and of not more than $250,000 in the aggregate. A civil action filed under this subsection must be filed in a district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 81. Section 2306.0724, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A housing sponsor who fails to file a report in a timely

manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Subsection (e) [~~Section 2306.6023~~].

(e) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 82. Section 2306.186, Government Code, is amended by amending Subsection (k) and adding Subsection (m) to read as follows:

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Subsection (m) [~~Section 2306.6023~~]. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(m) In determining the amount of an administrative penalty

assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

SECTION 83. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its Internet website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and provide a hard copy of that information to those persons on request by those persons.

SECTION 84. Section 11.432, Tax Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by:

(1) a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, showing that the individual applying for the exemption is the owner of the manufactured home;

(2) [~~or be accompanied by~~] a verified copy of the

purchase contract showing that the applicant is the purchaser of the manufactured home;

(3) a photostatic copy of the current title page for the manufactured home as that page is displayed on the Internet website of the Texas Department of Housing and Community Affairs; or

(4) the applicable computer records of the Texas Department of Housing and Community Affairs.

(b-1) The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether:

(1) an owner has elected to treat the manufactured home as real property or personal property; or

(2) the home is listed on the tax rolls together with the real property to which it is attached or is listed separately from that property.

SECTION 85. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the escrow account will be used solely to provide for the payment of property taxes collected on the property owner's manufactured home, the collector shall enter into a contract under this section with a property owner who:

(1) owns the manufactured home; and

(2) requests the establishment of the escrow account.

SECTION 86. Section 32.03, Tax Code, is amended by amending Subsections (a-1), (a-2), and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than the expiration of the six-month period following the end of the calendar year for which the tax was owed. The tax lien may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against the owner of a new manufactured home who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer title of a manufactured home until all tax liens perfected on the home have been filed in a timely manner with the Texas Department of Housing and Community Affairs and until all personal property taxes on the manufactured home that accrued on each January 1 within 18 months of the date of the sale are extinguished or satisfied and released. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on the manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community

Affairs. In this section, "manufactured home" has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed in a timely manner with the Texas Department of Housing and Community Affairs, a taxing unit or an agent of the taxing unit may not use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home as a result of the unfiled tax lien.

(b-1) A taxpayer is entitled to designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(b-2) Notwithstanding any other provision of law, if a manufactured home was omitted from the tax roll at any time before the second anniversary of the date on which taxes are due, the taxing unit may file a tax lien not later than the 150th day after the date on which the tax becomes delinquent.

(b-3) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide the prospective buyer of the manufactured home with an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. To enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the

taxes are levied, the tax collector shall apply the escrowed amounts to the levied taxes. At the time that the tax collector accepts the payment of the taxes, the tax collector shall notify the taxpayer that the payment of the estimated taxes is an estimate that may increase once the appraisal rolls for the year are certified. The tax collector shall notify the new owner that the new owner of the manufactured home may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 87. The following provisions are repealed:

(1) Section 1201.054(c), Occupations Code;

(2) Section 1201.059, Occupations Code;

(3) Section 1201.112, Occupations Code;

(4) Section 1201.163, Occupations Code;

(5) Sections 1201.214(c) and (d), Occupations Code;

(6) Section 1201.408, Occupations Code; and

(7) Section 2306.6023, Government Code.

SECTION 88. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 89. This Act takes effect September 1, 2007.

ADOPTED

MAY 22 2007

Secretary of the Senate

By: Haggerty / Harris H.B. No. 1460

Substitute the following for H.B. No. 1460:

By: Chris Harris C.S.H.B. No. 1460

A BILL TO BE ENTITLED

AN ACT

relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended to read as follows:

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the

modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) [~~(2-a)~~] "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) [~~(3)~~] "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) [~~(4)~~] "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured

homes.

(7) [~~(5)~~] "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(8) [~~(6)~~] "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(9) "Control" means, with respect to another person, the possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(10) [~~(7)~~] "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) [~~(8)~~] "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) [~~(9)~~] "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections;

and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) [~~(10)~~] "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) [~~(11)~~] "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) [~~(12)~~] "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(16) [~~(13)~~] "Lease-purchase" means entering into a lease contract for a manufactured home, in which the lessor retains

title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.

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

(18) [~~(15)~~] "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) [~~(16)~~] "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(20) [~~(17)~~] "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(22) [~~(18)~~] "Person" means an individual or a

partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who directly or indirectly participates in management or policy decisions.

(24) [~~(19)~~] "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) [~~(20)~~] "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(27) [~~(21)~~] "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) [~~(22)~~] "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) [~~(23)~~] "Standards code" means the Texas Manufactured Housing Standards Code.

(30) [~~(23-a)~~] "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured

home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) [~~(24)~~] "Trust fund" means the manufactured homeowners' recovery trust fund.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership and location; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a

fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

SECTION 3. Subsection (a), Section 1201.053, Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Section 1201.054, Occupations Code, is amended to read as follows:

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, 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, Government Code, shall apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(c) [~~A rule as finally adopted must be published in the Texas Register and state the rule's effective date.~~

[~~(d)~~] A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier [~~later~~] than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.055, Occupations Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 6. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to

file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees [~~the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter~~].

SECTION 7. Section 1201.101, Occupations Code, is amended by amending Subsections (d), (f), and (g) and adding Subsection (f-1) to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may 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.

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person exempt from licensing [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 8. Subsections (a), (b), and (c), Section 1201.102, Occupations Code, are amended to read as follows:

(a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not~~

~~required to hold an individual license~~].

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems [~~Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor~~].

(c) An individual who [~~In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or broker's license or who is a related person of such a licensee[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 9. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must 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 [~~the~~] trade names, and the names of all other business organizations, under [~~name by~~] which the applicant does business subject to this chapter [~~and, if incorporated~~], the name of each such business organization registered with the secretary of state, and the address of such [~~the~~] business organization; [~~and~~]

(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.

(a-1) All required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 10. Sections 1201.104 and 1201.105, Occupations Code, are amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete 20 hours of instruction in the law, including

instruction in consumer protection regulations. If the applicant is not an individual, the applicant must have at least one related person who meets this requirement [~~The director may not issue a license to that person until the course of instruction is completed~~].

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval. Classes must be live. Online or other electronic classes are not permitted.

(f) An applicant for an initial installer's license shall receive a license on a probationary basis. The person's probationary status shall remain in effect until such time as a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established

under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(h) [~~(f)~~] An examination must [~~may not~~] be a requirement of successful completion of any initial required course of instruction under this section [~~made a prerequisite of licensing~~].

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund.

(b) If a bond is filed, the bond must be issued by a company

authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each retailer's branch location;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur

unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a licensee or a business entity under which [~~corporation that is~~] a license holder conducts business; or

(2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption [~~The director may require a proper endorsement of the original bond~~].

SECTION 13. Subsections (a), (b), and (c), Section 1201.113, Occupations Code, are amended to read as follows:

(a) The board shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for licensees [~~salespersons regulated~~] under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Attendance at an approved or administered continuing

education course described by Subsection (a) is a prerequisite to renewal of a license [~~A person who holds a salesperson's license must participate in certification and continuing education programs as provided by Subsection (c)~~].

(c) No test shall be given in relation to any continuing education program [~~To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution~~].

SECTION 14. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION; PROBATIONARY LICENSE. (a) Any license under this chapter other than a probationary [~~A manufacturer's, retailer's, broker's, or installer's~~] license is valid for [~~one year. A salesperson's license is valid for~~] two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

(b) If the director determines that a licensed salesperson or installer should receive a probationary license, the director may issue a probationary license on such terms and for such period as are deemed reasonable. The issuance of a license on a

probationary basis, any one or more of the specific terms of the probation, or the period of probation may be appealed before the 31st day after issuance of the probationary license by written notice to the director. If appeal is made, the director shall set the matter for a hearing before the State Office of Administrative Hearings, and all administrative proceedings relating to the issuance of the probationary license shall be deemed to be a contested case under Chapter 2001, Government Code. If no appeal is made, the probationary license shall be issued and shall remain in effect in accordance with the terms specified [~~The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable~~].

SECTION 15. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall 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 16. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 17. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 18. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(e) A deposit becomes a down payment upon execution of a binding written agreement. Thereafter, if the consumer exercises a right of rescission, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, without offset or deduction.

SECTION 19. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

(b) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 226.

SECTION 20. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 21. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by Section 1201.456, a [~~A~~] broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

SECTION 22. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) Unless the information provided for in Subsection (c) is provided electronically, the [~~The~~] department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

(e) The copies and lists to be provided under this section

may be provided electronically.

SECTION 23. Section 1201.162, Occupations Code, is amended to read as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) 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, the retailer [~~or agent~~] must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must 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 purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for~~

~~manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the~~

~~requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the third day after the date the applicable contract is signed,~~

~~rescind the contract without penalty or charge."~~

[~~(d)~~] A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer.

[~~(e)~~] Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

SECTION 24. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND

DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for in Subsection (b), the [~~The~~] consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) The consumer may modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required

waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

SECTION 25. Sections 1201.203, 1201.204, and 1201.205, Occupations Code, are amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership [~~and location at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect a lienholder recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director [~~or on another~~

~~document~~], the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien [~~the manufacturer's certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must [~~may~~] submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and location free and clear of any liens other than liens created by or

consented to by the consumer.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be evidenced by a board-approved form issued by the department setting forth [~~provide~~]:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where [~~county of this state in which~~] the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs - Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year." [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the board [~~director~~] requires.

SECTION 26. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the form of application for statement and ownership and location promulgated by the board [~~made by affidavit~~].

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, obtain a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a real property election has complied with the requirements of this subsection.

SECTION 27. Sections 1201.206, 1201.207, 1201.2075, 1201.2076, and 1201.208, Occupations Code, are amended to read as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) [~~(b)~~] At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement of ownership and location.

(b) [~~(c)~~] Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply

with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) [~~(d)~~] Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(d) If the seller accepts a trade-in manufactured home as part of the consideration for the sale of another manufactured home, the seller shall file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the trade-in manufactured home from the prospective buyer to the seller. The seller shall file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home that was sold by the seller. If the seller is a retailer, the seller shall indicate on the application for the issuance of the new statement of ownership and location whether the trade-in manufactured home has been added to the inventory of the retailer.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with

the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) When the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory, the seller shall also file with the department a statement from the tax assessor-collector that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the sale.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least $100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership and location the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP

TO ONE HUNDRED DOLLARS ($100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) When a properly completed notice of installation on the department's promulgated form is filed that relates to a secondary move, the notice must be accompanied by either:

(1) one true and correct copy of the original notice of installation; or

(2) a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser for the county in which the home was installed; the delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

(i-1) If the method specified in Subsection (i)(2) is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(j) In addition to providing each chief appraiser the monthly report required by Section 1201.220, the department shall, on request, provide tax collector one copy of any requested reported notice of installation.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable

supporting proof as the director may require.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership and location until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the issuance in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the owner and each [~~of the home and to any~~] lienholder.

(c) Except with respect to any change in use, but subject to

Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative or a court order.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

(e) Notwithstanding any other provision of this chapter, if

the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of

ownership and location for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the

amount deducted from the security for the license [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 28. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Until a revocation or suspension has become final, the department shall place a hold on any activity relating to the statement of ownership and location other than the recordation of liens, including tax liens.

SECTION 29. Subsection (b), Section 1201.214, Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a [~~certified~~] copy of the statement of ownership and location issued under this subsection.

SECTION 30. Subsection (a), Section 1201.216, Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property

or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or of recordation of liens, including tax liens.

SECTION 31. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located. The notice must include the address where the home is currently located. If the person giving such notice knows that the person to whom the notice is being given no longer resides and is no longer receiving mail at such address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required

to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, [~~or~~] a lienholder, or a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, or tax assessor-collector seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

SECTION 32. Sections 1201.219 and 1201.220, Occupations Code, are amended to read as follows:

Sec. 1201.219. PERFECTION AND EFFECT OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a

retailer who fails to satisfy a perfected inventory lien [~~under the terms of the security agreement~~].

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

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien security agreement [~~by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and

marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose of title issuance.

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home reported as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 33. The heading to Section 1201.251, Occupations Code, is amended to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD [~~DIRECTOR~~].

SECTION 34. Section 1201.251, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) The board [~~director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

SECTION 35. Subsection (a), Section 1201.252, Occupations

Code, is amended to read as follows:

(a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board [~~director~~] unless, after a hearing, the board expressly approves the proposed standard.

SECTION 36. Sections 1201.253, 1201.254, and 1201.255, Occupations Code, are amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board [~~director~~] must state its effective date [~~as provided by Section 1201.054~~].

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose.

(b) An installer may not install a 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 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 [~~director~~].

SECTION 37. Subsection (b), Section 1201.301, Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee [~~manufacturing facility~~].

SECTION 38. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 39. Subsections (a) and (b), Section 1201.302, Occupations Code, are amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

(b) On request, the department shall 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 the board [~~director~~]. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

SECTION 40. Subsections (a) and (b), Section 1201.351, Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

SECTION 41. Sections 1201.352 through 1201.355, Occupations Code, are amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE

MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or

retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, [~~or~~] retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the

manufacturer, [~~or~~] retailer, or installer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

SECTION 42. Subsections (a), (b), and (c), Section 1201.356, Occupations Code, are amended to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, [~~and~~] retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by [~~either~~] the manufacturer's, [~~or~~] retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, [~~or~~]

retailer, or installer an appropriate order for corrective action by the manufacturer, [~~or~~] retailer, or installer specifying a reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

SECTION 43. Sections 1201.357 and 1201.358, Occupations Code, are amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within a [~~the~~] period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in

writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's

new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Failure by the manufacturer, [~~or~~] retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If the director determines that the order was incorrect regarding that obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other~~].

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer, [~~or~~] retailer, or installer performing the obligation the right of indemnification against another party [~~the other~~].

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 44. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all [~~secondary~~] installations [~~not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the

requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of [~~the~~] installation.

SECTION 45. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

SECTION 46. Subsection (a), Section 1201.402, Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 47. Subsection (b), Section 1201.404, Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay

the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

SECTION 48. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment.

(g) The board by rule may 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. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

SECTION 49. Sections 1201.406 and 1201.407, Occupations Code, are amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before

the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes the director determines to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow [~~provide~~] a license holder 10 days [~~an opportunity~~] to comment on this [~~the~~] preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before

the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government Code.

(f) Any [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the~~] license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 50. Subsections (a) and (b), Section 1201.409, Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 51. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. INFORMATION ON RECOVERY FROM TRUST FUND [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for notifying [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund, shall post the information on the department's website, and shall make printed copies available on request.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 52. Subsection (b), Section 1201.451, Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

SECTION 53. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to

the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 54. Subsection (b), Section 1201.457, Occupations Code, is amended to read as follows:

(b) If a used manufactured home is reserved for business use or salvaged, a person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue a new [~~the~~] statement of ownership and location.

SECTION 55. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured

home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a [~~the~~] home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector [~~collector~~] may[~~:~~

[~~(1)~~] apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home[~~;~~

[~~(2) pay the applicable fee; and~~

[~~(3) recover that fee as part of the cost of the sale of the home~~].

(c) A [~~The~~] seal issued to a tax appraiser or [~~the~~] tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 56. The heading to Section 1201.461, Occupations Code, is amended to read as follows:

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

SECTION 57. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

SECTION 58. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

SECTION 59. Subsection (a), Section 1201.506, Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4,

Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 60. Subchapter K, Chapter 1201, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit 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 the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 61. Sections 1201.551, 1201.552, and 1201.553, Occupations Code, are amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a

rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed [~~timely provide to a consumer an~~] application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had another license issued by this state revoked or suspended.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

Sec. 1201.552. [~~HEARING CONCERNING~~] LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any [~~an~~] order, decision, or determination of the board [~~director~~] is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 62. Section 1201.605, Occupations Code, is amended

to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a licensee [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the

date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

SECTION 63. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business

hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the 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 the department under this chapter, the director may 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.

(b) The director may issue an order to any 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 director shall consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is based. If a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued, the director shall set and give notice of a hearing. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has occurred or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. 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.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker,

installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's

petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the order of the director assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County.

(g) If, after judicial review, the penalty is reduced or not assessed, the director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the

manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 64. Subsection (b), Section 2306.6022, Government Code, is amended to read as follows:

(b) The division shall make available on its website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

SECTION 65. Section 94.051, Property Code, is amended to read as follows:

Sec. 94.051. INFORMATION TO BE PROVIDED TO PROSPECTIVE TENANT. At the time the landlord receives an application from a prospective tenant, the landlord shall give the tenant a copy of:

(1) the proposed lease agreement for the manufactured home community;

(2) any manufactured home community rules; and

(3) a separate disclosure statement with the following prominently printed in at least 10-point type:

"You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, [~~if the recreational vehicle is tied to, affixed, or otherwise a permanent part of the premises,~~] the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice [~~if the landlord will not renew your lease and will require that you relocate your manufactured home or recreational vehicle~~]. During the applicable [~~60-day~~] period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal."

SECTION 66. Section 94.052(b), Property Code, is amended to read as follows:

(b) Except as provided by Section 94.204, regardless [~~Regardless~~] of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the date of the expiration of the lease if the landlord chooses [~~does~~] not to renew the lease. During the applicable [~~60-day~~] period, the tenant must pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

SECTION 67. Section 94.053(c), Property Code, is amended to read as follows:

(c) A lease agreement must contain the following information:

(1) the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;

(2) the lease term;

(3) the rental amount;

(4) the interval at which rent must be paid and the date on which periodic rental payments are due;

(5) any late charge or fee or charge for any service or facility;

(6) the amount of any security deposit;

(7) a description of the landlord's maintenance responsibilities;

(8) the telephone number of the person who may be contacted for emergency maintenance;

(9) the name and address of the person designated to accept official notices for the landlord;

(10) the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;

(11) the grounds for eviction as provided by Subchapter E;

(12) a disclosure of the landlord's right to choose not to renew [~~terminate~~] the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;

(13) a disclosure of any incorporation by reference of an addendum relating to submetering of utility services;

(14) a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the tenant and obligations imposed on the landlord by law;

(15) if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and

(16) any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

SECTION 68. The heading to Section 94.204, Property Code, is amended to read as follows:

Sec. 94.204. NONRENEWAL OF LEASE [~~TERMINATION~~] FOR CHANGE IN LAND USE.

SECTION 69. Section 94.204(a), Property Code, is amended to read as follows:

(a) A landlord may choose not to renew [~~terminate~~] a lease agreement to change the manufactured home community's land use only if not later than the 180th day before the date the land use will change:

(1) [~~not later than the 120th day before the date the land use changes,~~] the landlord sends notice to the tenant, to the owner of the manufactured home if the owner is not the tenant, and to the holder of any lien on the manufactured home:

(A) specifying the date that the land use will change; and

(B) informing the tenant, owner, and lienholder, if any, that the owner must relocate the manufactured home; and

(2) [~~not later than the 120th day before the date the~~

~~land use changes,~~] the landlord posts in a conspicuous place in the manufactured home community a notice stating that the land use will change and specifying the date that the land use will change.

SECTION 70. Subsections (a) and (b), Section 11.432, Tax Code, are amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 [~~of this code~~], the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, 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 for the home is displayed on the computer website of the Texas Department of Housing and Community Affairs. The appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to determine whether a manufactured home qualifies for an exemption.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08. The consumer is entitled to obtain the homestead exemptions provided by Section

11.13 regardless of whether the owner has elected to treat the home as real property or personal property and regardless of whether the home is listed on the tax rolls with the real property to which it is attached or separately.

SECTION 71. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

SECTION 72. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured

home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer ownership [~~title~~] of a manufactured home until all tax liens perfected on the home that have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a [~~the~~] manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will

be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 73. (a) The following provisions of the

Occupations Code are repealed:

(1) Section 1201.059;

(2) Section 1201.112;

(3) Subsections (c), (d), (e), (f), and (g), Section 1201.113;

(4) Section 1201.163;

(5) Subsections (c) and (d), Section 1201.214; and

(6) Section 1201.408.

(b) Section 2306.6023, Government Code, is repealed.

SECTION 74. The changes in law made by this Act to Sections 94.051, 94.052, 94.053, and 94.204, Property Code, apply only to a lease agreement or a renewal to a lease agreement entered into after the effective date of this Act. A lease agreement or a renewal to a lease agreement entered into on or before the effective date of this Act is covered by the law in effect at the time the lease agreement or the renewal to the lease agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 75. The change in law made by this Act applies only to the sale, exchange, or lease-purchase of a new or used manufactured home on or after the effective date of this Act. A sale, exchange, or lease-purchase of a new or used manufactured home before the effective date of this Act is governed by the law in effect on the date of the sale, exchange, or lease-purchase, and the former law is continued in effect for that purpose.

SECTION 76. Except as otherwise provided by this Act, the changes in law made by this Act apply only to a license issued or renewed by the Texas Department of Housing and Community Affairs on

or after January 1, 2008. An issuance or renewal that occurs before January 1, 2008, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 77. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 78. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 79. This Act takes effect January 1, 2008.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 15, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 2nd House, Substituted: a negative impact of ($215,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($138,388)
2009	($76,975)
2010	($76,975)
2011	($76,975)
2012	($76,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2007
2008	($138,388)	1.5
2009	($76,975)	1.0
2010	($76,975)	1.0
2011	($76,975)	1.0
2012	($76,975)	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first

retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the agency being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require 0.5 FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 4, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Engrossed: a negative impact of ($215,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($138,388)
2009	($76,975)
2010	($76,975)
2011	($76,975)
2012	($76,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2007
2008	($138,388)	1.5
2009	($76,975)	1.0
2010	($76,975)	1.0
2011	($76,975)	1.0
2012	($76,975)	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the

deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The

Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 27, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, Committee Report 1st House, Substituted: a negative impact of ($2,051,363) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($1,056,388)
2009	($994,975)
2010	($994,975)
2011	($994,975)
2012	($994,975)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926	Change in Number of State Employees from FY 2007
2008	($918,000)	($138,388)	$918,000	1.5
2009	($918,000)	($76,975)	$918,000	1.0
2010	($918,000)	($76,975)	$918,000	1.0
2011	($918,000)	($76,975)	$918,000	1.0
2012	($918,000)	($76,975)	$918,000	1.0

Fiscal Analysis

The bill would amend the Occupations Code, the Government Code, and the Tax Code, relating to the taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. The bill would raise the amount of bond required for a rebuilder license to $50,000 (from $30,000) and for an installer's license to $25,000 (from $10,000) and add a new $50,000 bond for each additional branch location of a retailer.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the purposes of the fund. Administrative penalties and $10 of each statement of ownership and location fee would be deposited to the credit of the fund. The executive director of the Texas Department of Housing and Community Affairs (TDHCA) would administer the fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 60 days. Failing to meet the deadline could lead to an administrative penalty of not less than $100 against the seller.

Persons whose license was revoked, suspended, or denied could request a hearing conducted by the State Office of Administrative Hearings. Penalties would be forwarded to TDHCA for deposit to an escrow account.

The bill would amend Chapter 2306 of the Government Code relating to the criteria TDHCA would consider in determining the amount of an administrative penalty assessed against a housing sponsor or development owner.

The bill would amend Chapter 11 of the Tax Code to allow a person seeking a homestead exemption to provide a copy of the current title page for a manufactured home from the TDHCA website or other computer records of TDHCA. An exemption could be obtained regardless of the owner's election to treat the home as real property or personal property or if the home was listed with or separately from the real property.

The bill would limit the time a tax lien could be recorded on a home to no later than six months, following the end of a calendar year for which a tax was owed. A properly recorded tax lien could be enforced, but not against the owner of a new home when acquired from a retailer in the ordinary course of business. Title could not be transferred on a home until all tax liens perfected on a home were filed in a timely manner with TDHCA and all personal property taxes accruing on each January 1 within 18 months of the date of the sale were extinguished or satisfied and released.

The bill would place limits on the use of tax warrants in foreclosure, and it would give taxpayers the right to designate payments to a tax year. If a home had been omitted from a tax roll at any time before the second anniversary of the date taxes were due, a taxing unit could file a tax lien no later than the 150th day after the date the tax became delinquent.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow and certify that information to TDHCA, apply payments when due, and notify a new owner of any liability that might be due.

The bill would take effect September 1, 2007. The changes relating to ad valorem taxes would apply beginning January 1, 2008.

Methodology

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) for an installer's license to $25,000 (from the current $10,000) and add a new $50,000 bond for each additional branch location of a retailer. There would be no fiscal impact to the state for this change.

The changes relating to qualification for the homestead exemption and the informational and other requirements imposed on taxing units cannot be estimated.

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as a dedicated fund held in trust for carrying out the specific purposes of the fund. Administrative penalties—estimated to be $18,000 annually—now dedicated to the General Revenue Fund 0001 would be dedicated to the trust fund. In addition, $10 of each $55 fee collected for a statement of ownership and location and currently deposited to Fund 0001 would be deposited to the trust fund. TDHCA estimates that 90,000 statements are sold each fiscal year. The table above reflects

the Comptroller's estimate of revenue loss to General Revenue and subsequent gain to the Trust Fund.

Currently, the Manufactured Housing Division of the Texas Department of Housing and Community Affairs has no staff attorneys and the Office of the Attorney General's (OAG) Administrative Law Division provides all legal services for general counsel, enforcement, and administrative law litigation. The bill creates numerous new rights to contested case hearings. The new provisions in the bill requiring a licensee against whom administrative action is taken to request a contested case hearing (rather than the Department being required to provide one whether requested or not) is anticipated to somewhat offset the total increase in contested case hearings. However, the need for an additional attorney to handle enforcement would still be required (as reflected in the filed version of HB 1460) due to the added provisions in the bill.

The new rule making requirements are anticipated to require additional provision of general counsel services. Additionally, implementation of the bill is anticipated to require additional provision of general counsel services based on historical use of these services. General counsel services are reduced from the filed version of HB 1460 since the committee substitute is less complicated. The Department will require less counsel because the provisions relating to tax lien recordation and enforcement have been removed. Those provisions were anticipated to be difficult to interpret and advise the Department. Nonetheless, this bill still requires new agency rule making and will require additional counsel to implement in the first year.

With the passage of this bill, the OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium. The OAG's Administrative Law Division would require ½ FTE assistant attorney general (AAG) IV in FY 2008 only for general counsel work related to adoption of the new rules and implementation of the bill. In fiscal years 2008-2012, 1.0 FTE (AAG II) would be needed for enforcement. The OAG would require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

The fiscal impact to the OAG in fiscal year 2008 is $138,388 and $76,975 in each fiscal year 2009-2012 thereafter. The total cost over the five-year period is $446,288. The method of finance is General Revenue Fund (Fund 0001).

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The one-time technology impact to the Office of the Attorney General is $2,787 in FY 2008 for network stations and software.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, SJS

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 20, 2007

TO: Honorable Kino Flores, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1460** by Haggerty (Relating to the licensing, acquisition, and regulation of manufactured housing.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1460, As Introduced: a negative impact of ($1,568,720) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($792,080)
2009	($776,640)
2010	($776,640)
2011	($776,640)
2012	($776,640)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *APPROPRIATED RECEIPTS* 666	Probable Revenue Gain/(Loss) from *MFG HOMEOWNER RECOVERY FD* 926
2008	($600,000)	($192,080)	($905,000)	$600,000
2009	($600,000)	($176,640)	($897,200)	$600,000
2010	($600,000)	($176,640)	($897,200)	$600,000
2011	($600,000)	($176,640)	($897,200)	$600,000
2012	($600,000)	($176,640)	($897,200)	$600,000

Fiscal Year	Change in Number of State Employees from FY 2007
2008	5.0
2009	5.0
2010	5.0
2011	5.0
2012	5.0

Fiscal Analysis

The bill would amend the Tax Code, the Occupations Code, and the Finance Code, relating to the

taxation, licensing, acquisition, and regulation of manufactured housing.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption would be claimed on a personal property manufactured home and that a taxing authority would rely on the computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. The bill would note the requirements necessary for a tax assessor-collector to enter into a contract to establish an escrow account with a property owner for the payment of property taxes.

The bill would establish that a valid tax lien filed timely with TDHCA would be deemed notice of a lien, require the payment of personal property taxes accrued on each January 1 within 18 months of the date of sale in order to transfer title, place limits on the use of tax warrants in foreclosure, and give taxpayers the right to designate payments to a tax year.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would require a taxing unit to provide a prospective buyer of a home with an estimate of personal property taxes due, accept payment in escrow, apply payments when due, and notify a new owner of any liability that might be due. The bill would allow a prospective buyer (when seeking certification from a tax assessor-collector that taxes have been paid) to pay two years back taxes if a home had been omitted from the tax rolls by mistake.

The bill would amend Chapter 1201 of the Occupations Code to expand the definition of a manufactured home or manufactured housing, including new or used homes. In addition, the bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000).

The bill would reactivate the currently inactive Manufactured Homeowner's Recovery Trust Fund 0926 as the Manufactured Homeowner's Recovery Fund.

The bill would require a retailer to surrender the original manufacturer's statement of origin at the first retail sale and apply for a statement of ownership and location within 45 days. Failing to meet the deadline, if repeatedly violated, would lead to the revocation or suspension of a license and allow the board to assess administrative penalties ranging from $1,000 for a first violation to $4,000 for each subsequent violation. Persons not licensed or failing to take required actions would face an administrative penalty not to exceed $10,000, plus other reasonable fees and expenses. Persons operating without a license would commit an offense punishable as a class A or B misdemeanor and would be liable for damages. Violations would be subject to an administrative penalty not to exceed $1,000 per day for each violation. Penalties would be deposited to the credit of the fund.

The bill would amend Chapter 347 of the Finance Code, relating to the rights and responsibilities of an owner of a security interest in a home and the precedence of liens on a home.

The bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

Methodology

The bill would broaden the definition of a manufactured home to include homes smaller in size than "HUD-code" manufactured homes, sometimes referred to as "park models." Because there are no data on the number of these homes in existence, the fiscal impact of this provision cannot be estimated.

The bill would amend Chapter 11 of the Tax Code to clarify that a homestead exemption may be claimed on a personal property manufactured home and that a taxing authority would rely on the

computer records on the Texas Department of Housing and Community Affairs (TDHCA) website to verify the status of a homestead exemption as an alternative to a copy of a statement of ownership and location. This language would not change current law regarding the eligibility of mobile homes for homestead exemptions, and it would not create a significant cost to local governments or to the state.

Under the bill, a person with ownership interest in a home who believed that a collector or appraiser was acting in disregard of the law could file a complaint with the Comptroller. The bill would require the Comptroller to receive complaints, conduct administrative hearings, issue mandates, and forward unresolved complaints to the Attorney General's Office. District courts would impose fines and penalties for failure to comply with the Comptroller's mandates.

The bill would raise the amount of bond required from an applicant for a rebuilder license to $50,000 (from the current $30,000) and for an installer's license to $50,000 (from the current $10,000). There would be no fiscal impact to the state for this change.

The bill would authorize administrative penalties ranging from $1,000 to $10,000, plus other reasonable fees and expenses for violations.

The administrative cost estimate to the Comptroller's Office reflects the costs associated with the handling of complaints, administrative hearings, and mandates, which would require two hearings examiners with associated administrative costs. This cost is expected to be $240,840 per year and require 2 full time employees for each year. This cost is not reflected in the above table.

The administrative cost estimate to TDHCA reflects costs related to disciosing the name and address of the person obligated on the taxes and amount of each lien on a tax lien recording. The bill would also require TDHCA to provisionally record a lien on a record that reflects a taxpayer name that is different from the name of the owner and requires TDHCA to notify the appraisal district of the disparity and allow the taxing authority to resubmit an amended tax lien reflecting the name of the owner of the home within 60 days of notification. The cost is expected to be $905,000 in fiscal year 2008 and $897,200 per year beginning in fiscal year 2009 and require 3 full time employees for each year.

The bill would create the General Revenue-Dedicated - Homeowners' Recovery Fund and terminate the Manufactured Homeowners' Recovery Trust Fund in the General Revenue Fund. This fund would generate approximately $900,000 each year in fees and TDHCA anticipates that approximately $300,000 each year will be expended for carrying out the specific purposes of the fund.

The Office of the Attorney General (OAG) reports that the Manufactured Housing Division of the Texas Department of Housing and Community Affairs currently has no staff attorneys. The Department relies on the OAG's Administrative Law Division (ALD) for all general counsel work, enforcement work, and administrative law litigation.

Greater need for enforcement in this industry has been identified as a problem affecting the rights of consumers. Sec. 18, subsection (g) creates new enforcement authority for the Department that will require action by ALD. Sec. 32 creates additional new due process hearings and suits for injunctive relief and civil penalties--the ALD estimates that this will have significant impact in order to accomplish the goal of greater enforcement. As a result, the OAG would require 1 attorney in each fiscal year 2008-2012.

It is estimated that one FTE attorney will also be required to assist the Department in analyzing and implementing this bill, based on the complexity of the issues--taxing, lien recordation, and enforcement, and based on historic use of general counsel services for this purpose by the Department.

The OAG's Administrative Law Division would require, in each fiscal year 2008 -2012, one Assistant Attorney General II (AAG) to handle enforcement work and one AAG IV to handle general counsel work associated with passage of the bill. The cost in fiscal year 2008 is $192,080 and $176,640 in each fiscal year thereafter. The OAG will require an appropriation and additional FTEs beyond the FTE cap for the FY 2008-2009 biennium.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

There would be a technology cost to the Department of Housing and Community Affairs of $7,800 in fiscal year 2008 and $4,800 in fiscal year 2013. There would also be a one-time technology impact to the Office of the Attorney General of $2,787 in fiscal year 2008 for network stations and software.

Local Government Impact

Costs to local tax collectors would depend on the number of instances in which personal property taxes have not been levied by the taxing unit and there is a prospective buyer of the manufactured home. Most of these costs would be for letterhead, postage, and personnel time to collaborate with TDHCA and new owners to clear up any outstanding tax or escrow issues.

In addition, the bill could have a negative fiscal effect on local taxing authorities by deleting liens not matching TDHCA records. Without a lien on file, a taxing authority would see a loss of tax collection revenue.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 332 Department of Housing and Community Affairs

LBB Staff: JOB, JRO, SD, JM, AH, SJS, KJG

ENROLLMENT
H.B. No. 1460

AN ACT

relating to the licensing, acquisition, regulation, and taxation of manufactured housing; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1201.003, Occupations Code, is amended to read as follows:

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale, exchange, or lease-purchase of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the

modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) [~~(2-a)~~] "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) [~~(3)~~] "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) [~~(4)~~] "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale, exchange, or lease-purchase of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured

homes.

(7) [~~(5)~~] "Business use" means the use of a manufactured home for a purpose other than as a permanent or temporary dwelling.

(8) [~~(6)~~] "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase, exchange, or lease-purchase a manufactured home.

(9) "Control" means, with respect to another person, the possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(10) [~~(7)~~] "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) [~~(8)~~] "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) [~~(9)~~] "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections;

and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) [~~(10)~~] "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) [~~(11)~~] "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) [~~(12)~~] "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(16) [~~(13)~~] "Lease-purchase" means entering into a lease contract for a manufactured home, in which the lessor retains

title, containing a provision or, in another agreement, conferring on the lessee an option to purchase a manufactured home.

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

(18) [~~(15)~~] "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) [~~(16)~~] "Manufacturer" means a person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase in this state.

(20) [~~(17)~~] "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(22) [~~(18)~~] "Person" means an individual or a

partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who directly or indirectly participates in management or policy decisions.

(24) [~~(19)~~] "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale, exchange, or lease-purchase to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells, exchanges, or lease-purchases at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) [~~(20)~~] "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or lease-purchases or offers to sell or lease-purchase manufactured housing to a consumer [~~for any form of compensation~~].

(27) [~~(21)~~] "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) [~~(22)~~] "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) [~~(23)~~] "Standards code" means the Texas Manufactured Housing Standards Code.

(30) [~~(23-a)~~] "Statement of ownership and location" means a statement issued by the department and setting forth:

(A) the ownership and location of a manufactured

home [~~that has been sold at a retail sale or installed~~] in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) [~~(24)~~] "Trust fund" means the manufactured homeowners' recovery trust fund.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership and location has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership and location; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

SECTION 2. Section 1201.008, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a

fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

SECTION 3. Section 1201.053(a), Occupations Code, is amended to read as follows:

(a) The board [~~director~~] shall adopt rules[~~, issue orders,~~] and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

SECTION 4. Section 1201.054, Occupations Code, is amended to read as follows:

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, 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, Government Code, shall apply [~~A proposed rule must be published in the Texas Register before the 30th day preceding the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing must be published in the Texas Register before the 30th day preceding the date of the hearing~~].

(c) [~~A rule as finally adopted must be published in the Texas Register and state the rule's effective date.~~

[~~(d)~~] A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier [~~later~~] than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

SECTION 5. Section 1201.055, Occupations Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

SECTION 6. Section 1201.058, Occupations Code, is amended to read as follows:

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to

file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Ten dollars of the fee for each purchase, exchange, or lease-purchase of a manufactured home shall be deposited to the credit of the trust fund and used for the protection programs described by Subchapter I.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees [~~the fees imposed under Sections 1201.055-1201.057 in amounts that are reasonable and necessary to cover the cost of administering this chapter~~].

SECTION 7. Section 1201.101, Occupations Code, is amended by amending Subsections (d), (f), and (g) and adding Subsection (f-1) to read as follows:

(d) A person may not act as an installer [~~perform an installation function on manufactured housing~~] in this state unless the person holds an installer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may 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.

(g) A person may not make an announcement concerning the sale, exchange, or lease-purchase of, or offer to sell, exchange, or lease-purchase, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This subsection does not apply to:

(1) a person exempt from licensing [~~to whom a statement of ownership and location has been issued showing the person to be the owner of the home if the person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in a 12-month period~~]; or

(2) an advertisement concerning real property on [~~to~~] which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055 [~~permanently attached~~].

SECTION 8. Sections 1201.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer [~~An employee who acts as an agent of a license holder is covered by the holder's license and is not~~

~~required to hold an individual license~~].

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems [~~Except as provided by Section 1201.510, an independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who is responsible for an installation function performed by the agent or subcontractor~~].

(c) An individual who [~~In the case of a sole proprietorship, partnership, or corporation that~~] holds a retailer's license or broker's license or who is a related person of such a licensee[~~, an owner, partner, or officer of that entity~~] is not required to apply for a salesperson's license [~~if that owner, partner, or officer is properly listed in the retailer's or broker's license application~~].

SECTION 9. Section 1201.103, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) An applicant for a license as a manufacturer, retailer, broker, rebuilder, or installer must 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 [~~the~~] trade names, and the names of all other business organizations, under [~~name by~~] which the applicant does business subject to this chapter [~~and, if incorporated~~], the name of each such business organization registered with the secretary of state, and the address of such [~~the~~] business organization; [~~and~~]

(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.

(a-1) All required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed[~~, bonded~~] retailer or broker; and

(2) pay the required fee.

SECTION 10. Sections 1201.104 and 1201.105, Occupations Code, are amended to read as follows:

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as provided by Subsection (e), as a requirement [~~prerequisite~~] for a manufacturer's, retailer's, broker's, installer's, salvage rebuilder's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete 20 hours of instruction in the law, including

instruction in consumer protection regulations. If the applicant is not an individual, the applicant must have at least one related person who meets this requirement [~~The director may not issue a license to that person until the course of instruction is completed~~].

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction provided that the person successfully completes the next scheduled course offered after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval. Classes must be live. Online or other electronic classes are not permitted.

(f) An applicant for an initial installer's license shall receive a license on a probationary basis. The person's probationary status shall remain in effect until such time as a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established

under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) [~~(c) Instead of the course of instruction:~~

[~~(1) a manufacturer may request that an authorized representative of the department present a one-day, in-plant training program; or~~

[~~(2) the director may approve a training program for a license applicant that is conducted by a nonprofit educational institution or foundation.~~

[~~(d) A manufacturer shall reimburse the department for the actual cost of a program presented under Subsection (c)(1).~~

[~~(e)~~] Subsection (a) does not apply to a license holder [~~or registration holder~~] who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license[~~; or~~

[~~(3) for a salesperson's license~~].

(h) [~~(f)~~] An examination must [~~may not~~] be a requirement of successful completion of any initial required course of instruction under this section [~~made a prerequisite of licensing~~].

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided by this subchapter. The bond or other security is payable to the trust fund.

(b) If a bond is filed, the bond must be issued by a company

authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository [~~banking~~] institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

SECTION 11. Section 1201.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

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

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer's principal location [~~retailer~~];

(3) $50,000 for each retailer's branch location;

(4) $50,000 [~~$30,000~~] for a rebuilder;

(5) [~~(4)~~] $50,000 for a broker; or

(6) $25,000 [~~(5) $10,000~~] for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the trust fund to incur

unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

SECTION 12. Section 1201.108, Occupations Code, is amended to read as follows:

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a licensee or a business entity under which [~~corporation that is~~] a license holder conducts business; or

(2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption [~~The director may require a proper endorsement of the original bond~~].

SECTION 13. Sections 1201.113(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) The board shall approve [~~recognize, prepare,~~] or administer [~~certification and~~] continuing education programs for licensees [~~salespersons regulated~~] under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Attendance at an approved or administered continuing

education course described by Subsection (a) is a prerequisite to renewal of a license [~~A person who holds a salesperson's license must participate in certification and continuing education programs as provided by Subsection (c)~~].

(c) No test shall be given in relation to any continuing education program [~~To prepare or administer a certification or continuing education program under this section, the board may contract with:~~

[~~(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or~~

[~~(2) an educational institution~~].

SECTION 14. Section 1201.114, Occupations Code, is amended to read as follows:

Sec. 1201.114. LICENSE EXPIRATION; PROBATIONARY LICENSE. (a) Any license under this chapter other than a probationary [~~A manufacturer's, retailer's, broker's, or installer's~~] license is valid for [~~one year. A salesperson's license is valid for~~] two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

(b) If the director determines that a licensed salesperson or installer should receive a probationary license, the director may issue a probationary license on such terms and for such period

as are deemed reasonable. The issuance of a license on a probationary basis, any one or more of the specific terms of the probation, or the period of probation may be appealed before the 31st day after issuance of the probationary license by written notice to the director. If appeal is made, the director shall set the matter for a hearing before the State Office of Administrative Hearings, and all administrative proceedings relating to the issuance of the probationary license shall be deemed to be a contested case under Chapter 2001, Government Code. If no appeal is made, the probationary license shall be issued and shall remain in effect in accordance with the terms specified [~~The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable~~].

SECTION 15. Subchapter C, Chapter 1201, Occupations Code, is amended by adding Section 1201.118 to read as follows:

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall 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 16. Section 1201.1505, Occupations Code, is amended to read as follows:

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a [~~an earnest money~~] deposit on a specially ordered manufactured home [~~only if:~~

[~~(1) an earnest money contract has been signed by all parties;~~

[~~(2) if applicable, the original binding loan commitment letter issued by the lender is delivered to the consumer; and~~

[~~(3) the consumer has not rescinded the contract under Section 1201.1521~~].

SECTION 17. The heading to Section 1201.151, Occupations Code, is amended to read as follows:

Sec. 1201.151. REFUNDS [~~REFUND OF DEPOSIT~~].

SECTION 18. Section 1201.151, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this section, a retailer[~~, salesperson, or agent of the retailer~~] must refund a consumer's deposit not later than the 15th day after the date that a

written request for the refund is received from the consumer.

(e) A deposit becomes a down payment upon execution of a binding written agreement. Thereafter, if the consumer exercises a right of rescission, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, without offset or deduction.

SECTION 19. Section 1201.1521, Occupations Code, is amended to read as follows:

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE, EXCHANGE, OR LEASE-PURCHASE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase, exchange, or lease-purchase may, not later than the third day after the date the applicable contract is signed, rescind the contract without penalty or charge.

(b) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 226.

SECTION 20. Section 1201.158, Occupations Code, is amended to read as follows:

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring [~~for more than one~~] retailer or broker [~~or at more than one sales location~~].

SECTION 21. Section 1201.159, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to

read as follows:

(a) Except as provided by Section 1201.456, a [~~A~~] broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

SECTION 22. Section 1201.161, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by[~~:~~

[~~(1) the department; or~~

[~~(2)~~] the Texas Department of Transportation under Subchapter E, Chapter 623, Transportation Code.

(d) Unless the information provided for in Subsection (c) is provided electronically, the [~~The~~] department shall pay the reasonable cost of providing the copies or the list and information under Subsection (c).

(e) The copies and lists to be provided under this section may be provided electronically.

SECTION 23. Section 1201.162, Occupations Code, is amended to read as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) 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, the retailer [~~or agent~~] must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must 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 purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) [~~the following statement that is printed in at least 12-point type and not attached to or combined with any other written material:~~

[~~"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.~~

[~~"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and~~

~~enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.~~

[~~"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:~~

[~~"ZONING AND RESTRICTIVE COVENANTS. Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.~~

[~~"WATER. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.~~

[~~"SEWER. If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the~~

~~local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.~~

[~~"HOMEOWNER ASSOCIATION FEES. Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.~~

[~~"TAXES. Your home will be appraised and subject to ad valorem taxes as are other single-family residential structures. These taxes must be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.~~

[~~"INSURANCE. Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.~~

[~~"TYPES OF MORTGAGES AVAILABLE. The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.~~

[~~"RIGHT OF RESCISSION. If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than~~

~~the third day after the date the applicable contract is signed, rescind the contract without penalty or charge."~~

[~~(d)~~] A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer.

[~~(e)~~] Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

SECTION 24. Section 1201.164, Occupations Code, is amended to read as follows:

Sec. 1201.164. ADVANCE COPY OF [~~INSTALLMENT~~] CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations [~~chattel mortgage transaction involving an installment contract~~], a retailer shall deliver to a consumer at least 24 hours before the contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the [~~installment~~] contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for in Subsection (b), the [~~The~~] consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) The consumer may modify or waive the right to rescind and the deadlines for disclosures before the execution of the contract that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required

by this code and sell the manufactured home without the required waiting periods or the right of rescission. Printed forms for this purpose are prohibited except in a county that has been declared by the governor to be a major disaster area. If the governor declares a county to be a major disaster area, the retailer may use printed forms promulgated by the department. This exception shall expire one year after the county has been declared a major disaster area.

SECTION 25. Sections 1201.203, 1201.204, and 1201.205, Occupations Code, are amended to read as follows:

Sec. 1201.203. FORMS; RULES. (a) The board [~~director~~] shall [~~prescribe forms and~~] 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 [~~a~~] statement of ownership [~~and location at the first retail sale and for a subsequent sale or transfer of a manufactured home~~].

(b) The board [~~director~~] shall 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. The rules must protect a lienholder recorded with the department [~~on a statement of ownership and location, a certificate, or other document of title~~].

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director [~~or on another document~~], the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership and location.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien [~~the manufacturer's certificate~~] automatically converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must [~~may~~] submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership and location, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership and

location free and clear of any liens other than liens created by or consented to by the consumer.

Sec. 1201.205. STATEMENT OF OWNERSHIP AND LOCATION FORM. A statement of ownership and location must be evidenced by a board-approved form issued by the department setting forth [~~provide~~]:

(1) the name [~~names~~] and address [~~addresses~~] of the [~~purchaser and~~] seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's [~~director's~~] rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where [~~county of this state in which~~] the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a

statement of that fact;

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs - Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year." [~~the signature of the owner in ink, given on receipt of the document~~];

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership and location an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership and location in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property or personal property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only; and

(12) any other information the board [~~director~~] requires.

SECTION 26. Section 1201.2055, Occupations Code, is amended by amending Subsection (b) and adding Subsection (i) to read as follows:

(b) A statement of election under Subsection (a) must be executed before a notary on the form of application for statement and ownership and location promulgated by the board [~~made by affidavit~~].

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership and location electing real property status, obtain a certified copy of the statement of ownership and location, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address

where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a real property election has complied with the requirements of this subsection.

SECTION 27. Sections 1201.206, 1201.207, 1201.2075, 1201.2076, and 1201.208, Occupations Code, are amended to read as follows:

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) [~~(b)~~] At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership and location is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement of ownership and location.

(b) [~~(c)~~] Not later than the 60th [~~30th~~] day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership and location. If for any reason the retailer does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) [~~(d)~~] Not later than the 60th [~~30th~~] day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership and location. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(d) If the seller accepts a trade-in manufactured home as part of the consideration for the sale of another manufactured home, the seller shall file a completed application for the issuance of a new statement of ownership and location reflecting the change of ownership of the trade-in manufactured home from the prospective buyer to the seller. The seller shall file the application for the issuance of a new statement of ownership and location for the traded in manufactured home at the same time that the seller files the application for the issuance of a new statement of ownership and location for the manufactured home that was sold by the seller. If the seller is a retailer, the seller shall indicate on the application for the issuance of the new statement of ownership and location whether the trade-in manufactured home has been added to the inventory of the retailer.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership and location is filed with the department.

(f) If the owner of a manufactured home relocates the home,

the owner shall apply for the issuance of a new statement of ownership and location not later than the 60th [~~30th~~] day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Transportation.

(g) When the seller files an application for the issuance of a statement of ownership and location for a used manufactured home that is not in a retailer's inventory, the seller shall also file with the department a statement from the tax assessor-collector that there are no personal property taxes due on the manufactured home that may have accrued on each January 1 that falls within the 18 months before the date of the sale.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and location and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least $100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership and location the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP AND LOCATION LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP TO ONE HUNDRED DOLLARS ($100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) When a properly completed notice of installation on the department's promulgated form is filed that relates to a secondary move, the notice must be accompanied by either:

(1) one true and correct copy of the original notice of installation; or

(2) a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser for the county in which the home was installed; the delivery of the copy of the notice to the chief appraiser may be accomplished either by certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

(i-1) If the method specified in Subsection (i)(2) is used to report the installation, the department may adopt a discounted fee for the filing of the notice of installation.

(j) In addition to providing each chief appraiser the monthly report required by Section 1201.220, the department shall, on request, provide the tax collector one copy of any requested reported notice of installation.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership and location to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable supporting proof as the director may require.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP AND

LOCATION. (a) Except as provided for in Subsection (a-1), the [~~The~~] department shall process any completed application for the issuance of a statement of ownership and location not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership and location until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its website a notice as to when it is anticipated that processing statements of ownership and location will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership and location for a manufactured home, the department shall maintain a record of the issuance in its electronic records [~~place in its files the original statement of ownership and location~~] and shall mail a [~~certified~~] copy to the owner and each [~~of the home and to any~~] lienholder.

(c) Except with respect to any change in use, but subject to Section 1201.2075, if the department has issued a statement of ownership and location for a manufactured home, the department may

issue a subsequent statement of ownership and location for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership and location, the department shall not alter the record of the ownership or lien status of a manufactured home for any activity occurring before the issuance of the statement of ownership and location without either the written permission of the owner of record for the manufactured home, their legal representative, or a court order.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership and location has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership and location reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

(e) Notwithstanding any other provision of this chapter, if the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the

manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership and location for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership and location before the release of any liens or the consent of any lienholders as required by this section [~~only~~] if the department releases a certified copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of ownership and location for a manufactured home that is being converted from real property to personal property until the

department has inspected the home and determined that it is habitable and has notified the appropriate tax assessor-collector of the conversion and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP AND LOCATION. (a) Any licensee who sells, exchanges, or lease-purchases a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home [~~The department may not issue a statement of ownership and location for a new manufactured home installed for occupancy in this state unless the state sales and use tax has been paid~~].

(b) If it is determined that a new manufactured home was sold, exchanged, or lease-purchased without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the amount deducted from the security for the license [~~Proof of payment may be shown in any manner prescribed by the department~~].

SECTION 28. Section 1201.210, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Until a revocation or suspension has become final, the department shall place a hold on any activity relating to the statement of ownership and location other than the recordation of liens, including tax liens.

SECTION 29. Section 1201.214(b), Occupations Code, is amended to read as follows:

(b) An owner or lienholder may provide to the department a [~~the~~] document of title and any additional information required by the department and request that the department issue a statement of ownership and location to replace the document of title. The department shall mail to the owner or lienholder a [~~certified~~] copy of the statement of ownership and location issued under this subsection.

SECTION 30. Section 1201.216(a), Occupations Code, is amended to read as follows:

(a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or to reserve its use for a business purpose or salvage, the department shall indicate on the statement of ownership and

location for the home that:

(1) the owner of the home has elected to treat the home as real property or to reserve its use for a business purpose or salvage; and

(2) except as provided by Section 1201.2055(h), the home is [~~department~~] no longer [~~considers the home to be~~] a manufactured home for purposes of regulation under this chapter or of recordation of liens, including tax liens.

SECTION 31. Section 1201.217, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, [~~and~~] all lienholders at the addresses listed on the home's statement of ownership and location on file with the department, and the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located. The notice must include the address where the home is currently located. If the person giving such notice knows that the person to whom the notice is being given no longer resides and is no longer receiving mail at such address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, [~~or~~] a lienholder, or a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, or tax assessor-collector seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

SECTION 32. Sections 1201.219 and 1201.220, Occupations Code, are amended to read as follows:

Sec. 1201.219. PERFECTION AND EFFECT OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing the lien [~~a security agreement~~] with the department on the required form [~~in a form that contains the information the director requires~~]. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien [~~under the terms of the security agreement~~].

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

(c) Notwithstanding any other provision of this or any other law [~~subchapter~~], the filing of a lien security agreement [~~by a secured party perfecting a lien~~] on the inventory of a retailer does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien [~~interest~~], and the department may not consider that [~~security interest as a~~] lien for the purpose

of title issuance.

Sec. 1201.220. REPORT TO COUNTY TAX ASSESSOR-COLLECTOR. (a) The department shall provide to each county tax assessor-collector in this state a monthly report that, for each manufactured home reported as having been installed in the county during the preceding month and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership and location during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as [~~is~~] installed; and

(6) the reported date of the installation of the home.

(b) The director shall provide a copy of the report to the chief appraiser of the appraisal district established for the county in which the home is reported as installed.

SECTION 33. The heading to Section 1201.251, Occupations Code, is amended to read as follows:

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD [~~DIRECTOR~~].

SECTION 34. Section 1201.251, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to

read as follows:

(a) The board [~~director~~] shall adopt standards and requirements for:

(1) 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

(2) 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) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

SECTION 35. Section 1201.252(a), Occupations Code, is amended to read as follows:

(a) A local governmental unit of this state may not adopt a

standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board [~~director~~] unless, after a hearing, the board expressly approves the proposed standard.

SECTION 36. Sections 1201.253, 1201.254, and 1201.255, Occupations Code, are amended to read as follows:

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing [~~in accordance with Sections 1201.054 and 1201.060~~] before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board [~~director~~] must state its effective date [~~as provided by Section 1201.054~~].

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose.

(b) An installer may not install a 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 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 [~~director~~].

SECTION 37. Section 1201.301(b), Occupations Code, is amended to read as follows:

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee [~~manufacturing facility~~].

SECTION 38. The heading to Section 1201.302, Occupations Code, is amended to read as follows:

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS [~~ENTITIES OTHER THAN DEPARTMENT~~].

SECTION 39. Sections 1201.302(a) and (b), Occupations Code, are amended to read as follows:

(a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may 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 the board [~~director~~].

(b) On request, the department shall 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 the board [~~director~~]. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

SECTION 40. Sections 1201.351(a) and (b), Occupations Code, are amended to read as follows:

(a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

SECTION 41. Sections 1201.352 through 1201.355, Occupations Code, are amended to read as follows:

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, [~~or~~] retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, [~~or~~] retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, [~~or~~] retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, [~~or~~] retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, [~~or~~] retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer, [~~or~~] retailer, or installer:

(1) believes the consumer's complaints are not covered

by the warranty of the manufacturer, [~~or~~] retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

SECTION 42. Sections 1201.356(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, [~~and~~] retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by [~~either~~] the manufacturer's, [~~or~~] retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, [~~or~~] retailer, or installer an appropriate order for corrective action by the manufacturer, [~~or~~] retailer, or installer specifying a

reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

SECTION 43. Sections 1201.357 and 1201.358, Occupations Code, are amended to read as follows:

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails to provide warranty service within a [~~the~~] period specified by the director [~~under Section 1201.356~~], the manufacturer, [~~or~~] retailer, or installer must show good cause in writing as to why the manufacturer, [~~or~~] retailer, or installer failed to provide the service.

(b) If the manufacturer, [~~or~~] retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director shall hold an informal meeting [~~a hearing~~] at which the manufacturer, [~~or~~] retailer, or installer must show cause as to why the manufacturer's, [~~or~~] retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(c) If the manufacturer, [~~or~~] retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, [~~or~~] retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, [~~or~~] retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, [~~or~~] retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Failure by the manufacturer, [~~or~~] retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, [~~or~~] retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties [~~after the hearing under Section 1201.357(b), the director determines that the order under Section 1201.356 was correct in the determination of the warranty obligation of the manufacturer or retailer, failure or refusal by the manufacturer or retailer to comply with the order is a sufficient cause for suspension or revocation of the manufacturer's or retailer's license. If the director determines that the order was incorrect regarding that obligation, the director shall issue a final order stating the correct obligation and the right of the manufacturer or retailer to indemnification from the other~~].

(c) The director may issue an order:

(1) directing a manufacturer, [~~or~~] retailer, or

installer whose license is not revoked and who is not out of business to perform the warranty obligation of a manufacturer, [~~or~~] retailer, or installer whose license is revoked or who is out of business; and

(2) giving the manufacturer, [~~or~~] retailer, or installer performing the obligation the right of indemnification against another party [~~the other~~].

(d) A manufacturer, [~~or~~] retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages [~~and attorney's fees~~] from the trust fund.

SECTION 44. Section 1201.361, Occupations Code, is amended to read as follows:

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all [~~secondary~~] installations [~~not covered by the retailer's warranty described by Section 1201.352 and for the installation of all used manufactured homes~~], the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the

warranty provides for a longer period, the installer or retailer has no obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of [~~the~~] installation.

SECTION 45. Subchapter H, Chapter 1201, Occupations Code, is amended by adding Section 1201.362 to read as follows:

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

SECTION 46. Section 1201.402(a), Occupations Code, is amended to read as follows:

(a) The director shall administer the trust fund [~~as trustee of that fund~~].

SECTION 47. Section 1201.404(b), Occupations Code, is amended to read as follows:

(b) The trust fund and the director are not liable to the consumer if the trust fund does not have the money necessary to pay the actual damages [~~and attorney's fees~~] determined to be payable. The director shall record the date and time of receipt of each

verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

SECTION 48. Section 1201.405, Occupations Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The trust fund is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated; or

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment.

(g) The board by rule may 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. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the trust fund.

SECTION 49. Sections 1201.406 and 1201.407, Occupations Code, are amended to read as follows:

Sec. 1201.406. PROCEDURE FOR RECOVERY FROM TRUST FUND. (a) To recover from the trust fund, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the

director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security [~~to determine:~~

[~~(A) the validity of the claim; and~~

[~~(B) whether the complaint can be resolved by remedial action of the license holder~~].

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the [~~license holders or a license holder and a consumer disagree as to responsibility for a complaint, the~~] department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed [~~claim determined~~] to become final and [~~be~~] valid, the department shall make any changes the director determines to be appropriate and issue another written [~~a~~] preliminary determination [~~during the informal dispute resolution process~~] as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow [~~provide~~] a license holder 10 days [~~an opportunity~~] to comment on this [~~the~~] preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government

Code.

(f) Any [~~The department shall notify a license holder's surety and give the surety an opportunity to participate in the informal dispute resolution process if the license holder:~~

[~~(1) is out of business;~~

[~~(2) is no longer licensed; or~~

[~~(3) has filed for liquidation or reorganization in bankruptcy.~~

[~~(e) If, after receiving notice of the claim, a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process, the~~] license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

SECTION 50. Sections 1201.409(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as otherwise provided by Subchapter C, the trust fund shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that[~~:~~

[~~(1)~~] is paid out of the trust fund by the director to a consumer in accordance with this subchapter[~~; and~~

[~~(2) resulted from an act or omission of the license holder who filed the bond or other security~~].

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of [~~receipt of~~] notice from the director that a consumer claim has been paid.

SECTION 51. Section 1201.410, Occupations Code, is amended to read as follows:

Sec. 1201.410. INFORMATION ON RECOVERY FROM TRUST FUND [~~INFORMATIONAL PAMPHLET~~]. [~~(a)~~] The director shall prepare information for notifying [~~a pamphlet informing~~] consumers of their rights to recover from the trust fund, shall post the information on the department's website, and shall make printed copies available on request.

[~~(b) The director may contract with a private party for the printing and distribution of the pamphlet.~~]

SECTION 52. Section 1201.451(b), Occupations Code, is amended to read as follows:

(b) Not later than the 60th [~~30th~~] day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership and location.

SECTION 53. Section 1201.453, Occupations Code, is amended to read as follows:

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are

in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

SECTION 54. Section 1201.457(b), Occupations Code, is amended to read as follows:

(b) If a used manufactured home is reserved for business use or salvaged, a person may not [~~The purchaser of a used manufactured home for business use or the purchaser of a salvaged manufactured home may not sell, exchange, or lease-purchase the home for use as a dwelling or~~] knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership and location indicating that the home is no longer reserved for business use or salvage. On the purchaser's application to the department for issuance of a new statement of ownership and location, the department shall inspect the home and, if the department determines that the home is habitable, issue a new [~~the~~] statement of ownership and location.

SECTION 55. Section 1201.459, Occupations Code, is amended to read as follows:

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector [~~collector~~] is not required to comply with this subchapter or

another provision of this chapter relating to the sale of a used manufactured home.

(b) If a [~~the~~] home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector [~~collector~~] may[~~:~~

[~~(1)~~] apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home[~~;~~

[~~(2) pay the applicable fee; and~~

[~~(3) recover that fee as part of the cost of the sale of the home~~].

(c) A [~~The~~] seal issued to a tax appraiser or [~~the~~] tax assessor-collector [~~collector~~] is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location from the department without an inspection for habitability.

SECTION 56. The heading to Section 1201.461, Occupations Code, is amended to read as follows:

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY.

SECTION 57. Section 1201.461, Occupations Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has

been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) A licensee may not participate in the sale, exchange, lease-purchase, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

SECTION 58. Section 1201.503, Occupations Code, is amended to read as follows:

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

SECTION 59. Section 1201.506(a), Occupations Code, is amended to read as follows:

(a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.); [~~and~~]

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

SECTION 60. Subchapter K, Chapter 1201, Occupations Code, is amended by adding Section 1201.513 to read as follows:

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit 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 the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

SECTION 61. Sections 1201.551, 1201.552, and 1201.553, Occupations Code, are amended to read as follows:

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director[~~, after notice as provided for under Section 1201.054 and a hearing as provided by Sections 1201.054 and 1201.060,~~] may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property,

or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed [~~timely provide to a consumer an~~] application for a statement of ownership and location before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later [~~and any information necessary to complete the application~~];

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing; [~~or~~]

(9) failed to file a bond or other security for each location as required by Subchapter C; or

(10) has had another license issued by this state revoked or suspended.

(b) The director [~~department~~] may suspend or revoke a license if, after receiving notice of a claim, the license holder or

the license holder's surety fails or refuses to pay a final claim paid from the trust fund for which demand for reimbursement was made [~~participate in the informal dispute resolution process described by Section 1201.407~~].

Sec. 1201.552. [~~HEARING CONCERNING~~] LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision [~~shall conduct a hearing involving the denial, renewal, revocation, or suspension of a license in accordance with Chapter 2001, Government Code~~].

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any [~~an~~] order, decision, or determination of the board [~~director~~] is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

SECTION 62. Section 1201.605, Occupations Code, is amended to read as follows:

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director

may assess against a person who fails to comply with [~~obtain or maintain a license as required by~~] this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a licensee [~~retailer~~] who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving

written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

SECTION 63. Subchapter M, Chapter 1201, Occupations Code, is amended by adding Sections 1201.607 through 1201.611 to read as follows:

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to

protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A misdemeanor.

Sec. 1201.610. CEASE AND DESIST. (a) If the 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 the department under this chapter, the director may 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.

(b) The director may issue an order to any 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 director shall consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is based. If a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued, the director shall set and give notice of a hearing. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has occurred or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative

penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. 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.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the

director, from being a related person of a licensee.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the order of the director assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County.

(g) If, after judicial review, the penalty is reduced or not assessed, the director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) A penalty collected under this section shall be deposited in the trust fund.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to

restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 64. Section 2306.6022(b), Government Code, is amended to read as follows:

(b) The division shall make available on its website [~~provide to the person filing the complaint and to each person who is a subject of the complaint a copy of~~] the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

SECTION 65. Section 94.051, Property Code, is amended to read as follows:

Sec. 94.051. INFORMATION TO BE PROVIDED TO PROSPECTIVE TENANT. At the time the landlord receives an application from a prospective tenant, the landlord shall give the tenant a copy of:

(1) the proposed lease agreement for the manufactured home community;

(2) any manufactured home community rules; and

(3) a separate disclosure statement with the following prominently printed in at least 10-point type:

"You have the legal right to an initial lease term of six months. If you prefer a different lease period, you and your

landlord may negotiate a shorter or longer lease period. After the initial lease period expires, you and your landlord may negotiate a new lease term by mutual agreement. Regardless of the term of the lease, [~~if the recreational vehicle is tied to, affixed, or otherwise a permanent part of the premises,~~] the landlord must give you at least 60 days' notice of a nonrenewal of the lease, except that if the manufactured home community's land use will change, the landlord must give you at least 180 days' notice [~~if the landlord will not renew your lease and will require that you relocate your manufactured home or recreational vehicle~~]. During the applicable [~~60-day~~] period, you must continue to pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal."

SECTION 66. Section 94.052(b), Property Code, is amended to read as follows:

(b) Except as provided by Section 94.204, regardless [~~Regardless~~] of the term of the lease, the landlord must provide notice to the tenant not later than the 60th day before the date of the expiration of the lease if the landlord chooses [~~does~~] not to renew the lease. During the applicable [~~60-day~~] period, the tenant must pay all rent and other amounts due under the lease agreement, including late charges, if any, after receiving notice of the nonrenewal.

SECTION 67. Section 94.053(c), Property Code, is amended to read as follows:

(c) A lease agreement must contain the following information:

(1) the address or number of the manufactured home lot and the number and location of any accompanying parking spaces;

(2) the lease term;

(3) the rental amount;

(4) the interval at which rent must be paid and the date on which periodic rental payments are due;

(5) any late charge or fee or charge for any service or facility;

(6) the amount of any security deposit;

(7) a description of the landlord's maintenance responsibilities;

(8) the telephone number of the person who may be contacted for emergency maintenance;

(9) the name and address of the person designated to accept official notices for the landlord;

(10) the penalty the landlord may impose for the tenant's early termination as provided by Section 94.201;

(11) the grounds for eviction as provided by Subchapter E;

(12) a disclosure of the landlord's right to choose not to renew [~~terminate~~] the lease agreement if there is a change in the land use of the manufactured home community during the lease term as provided by Section 94.204;

(13) a disclosure of any incorporation by reference of an addendum relating to submetering of utility services;

(14) a prominent disclosure informing the tenant that Chapter 94, Property Code, governs certain rights granted to the

tenant and obligations imposed on the landlord by law;

(15) if there is a temporary zoning permit for the land use of the manufactured home community, the date the zoning permit expires; and

(16) any other terms or conditions of occupancy not expressly included in the manufactured home community rules.

SECTION 68. The heading to Section 94.204, Property Code, is amended to read as follows:

Sec. 94.204. NONRENEWAL OF LEASE [~~TERMINATION~~] FOR CHANGE IN LAND USE.

SECTION 69. Section 94.204(a), Property Code, is amended to read as follows:

(a) A landlord may choose not to renew [~~terminate~~] a lease agreement to change the manufactured home community's land use only if not later than the 180th day before the date the land use will change:

(1) [~~not later than the 120th day before the date the land use changes,~~] the landlord sends notice to the tenant, to the owner of the manufactured home if the owner is not the tenant, and to the holder of any lien on the manufactured home:

(A) specifying the date that the land use will change; and

(B) informing the tenant, owner, and lienholder, if any, that the owner must relocate the manufactured home; and

(2) [~~not later than the 120th day before the date the land use changes,~~] the landlord posts in a conspicuous place in the manufactured home community a notice stating that the land use will

change and specifying the date that the land use will change.

SECTION 70. Sections 11.432(a) and (b), Tax Code, are amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 [~~of this code~~], the application for the exemption must be accompanied by a copy of the statement of ownership and location for the manufactured home issued by the manufactured housing division of the Texas Department of Housing and Community Affairs under Section 1201.207, Occupations Code, 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 for the home is displayed on the computer website of the Texas Department of Housing and Community Affairs. The appraisal district may rely upon the computer records of the Texas Department of Housing and Community Affairs to determine whether a manufactured home qualifies for an exemption.

(b) The land on which a manufactured home is located qualifies for an exemption under Section 11.13 only if:

(1) the manufactured home qualifies for an exemption as provided by Subsection (a); and

(2) the manufactured home is listed together with the land on which it is located under Section 25.08. The consumer is entitled to obtain the homestead exemptions provided by Section 11.13 regardless of whether the owner has elected to treat the home as real property or personal property and regardless of whether the

home is listed on the tax rolls with the real property to which it is attached or separately.

SECTION 71. Section 31.072, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), if the property owner requesting a collector to establish an escrow account under this section is the owner of a manufactured home and the escrow account is to be used solely to provide for the payment of property taxes collected by the collector on the property owner's manufactured home, the collector shall enter into a contract with the property owner under this section.

SECTION 72. Section 32.03, Tax Code, is amended to read as follows:

Sec. 32.03. RESTRICTIONS ON PERSONAL PROPERTY TAX LIEN. (a) Except as provided by Subsection (a-1), a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business as defined by Section 1.201(9) of the Business & Commerce Code for value who does not have actual notice of the existence of the lien.

(a-1) With regard to a manufactured home, a tax lien may be recorded at any time not later than six months after the end of the year for which the tax was owed. A tax lien on a manufactured home may be enforced if it has been recorded in accordance with the laws in effect at the time of the recordation of the lien. A properly recorded tax lien may not be enforced against a new manufactured home that is owned by a person who acquired the manufactured home from a retailer as a buyer in the ordinary course of business [~~A tax~~

~~lien against a manufactured home may not be enforced unless it has been recorded with the Texas Department of Housing and Community Affairs as provided by Section 1201.219, Occupations Code:~~

[~~(1) before October 1, 2005; or~~

[~~(2) not later than six months after the end of the year for which the tax was owed~~].

(a-2) A person may not transfer ownership [~~title~~] of a manufactured home until all tax liens perfected on the home that have been timely filed with the Texas Department of Housing and Community Affairs have been extinguished or satisfied and released and any personal property taxes on the manufactured home which accrued on each January 1 that falls within the 18 months preceding the date of the sale have been paid. This subsection does not apply to the sale of a manufactured home in inventory.

(b) A bona fide purchaser for value or the holder of a lien recorded on a [~~the~~] manufactured home statement of ownership and location is not required to pay any taxes that have not been recorded with the Texas Department of Housing and Community Affairs. In this section, manufactured home has the meaning assigned by Section 32.015(b). Unless a tax lien has been filed timely with the Texas Department of Housing and Community Affairs, no taxing unit, nor anyone acting on its behalf, may use a tax warrant or any other method to attempt to execute or foreclose on the manufactured home.

(c) A taxpayer may designate in writing which tax year will be credited with a particular payment. If a taxpayer pays all the amounts owing for a given year, the taxing unit shall issue a

receipt for the payment of the taxes for the designated year.

(d) Notwithstanding any other provision of this section, if a manufactured home was omitted from the tax roll for either or both of the two preceding tax years, the taxing unit may file a tax lien within the 150-day period following the date on which the tax becomes delinquent.

(e) If personal property taxes on a manufactured home have not been levied by the taxing unit, the taxing unit shall provide, upon request, an estimated amount of taxes computed by multiplying the taxable value of the manufactured home, according to the most recent certified appraisal roll for the taxing unit, by the taxing unit's adopted tax rate for the preceding tax year. In order to enable the transfer of the manufactured home, the tax collector shall accept the payment of the estimated personal property taxes and issue a certification to the Texas Department of Housing and Community Affairs that the estimated taxes are being held in escrow until the taxes are levied. Once the taxes are levied, the tax collector shall apply the escrowed sums to the levied taxes. At the time the tax collector accepts the payment of the taxes, the tax collector shall provide notice that the payment of the estimated taxes is an estimate that may be raised once the appraisal rolls for the year are certified and that the new owner may be liable for the payment of any difference between the tax established by the certified appraisal roll and the estimate actually paid.

SECTION 73. (a) The following provisions of the Occupations Code are repealed:

(1) Section 1201.059;

(2) Section 1201.112;

(3) Sections 1201.113(c), (d), (e), (f), and (g);

(4) Section 1201.163;

(5) Sections 1201.214(c) and (d); and

(6) Section 1201.408.

(b) Section 2306.6023, Government Code, is repealed.

SECTION 74. The changes in law made by this Act to Sections 94.051, 94.052, 94.053, and 94.204, Property Code, apply only to a lease agreement or a renewal to a lease agreement entered into after the effective date of this Act. A lease agreement or a renewal to a lease agreement entered into on or before the effective date of this Act is covered by the law in effect at the time the lease agreement or the renewal to the lease agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 75. The change in law made by this Act applies only to the sale, exchange, or lease-purchase of a new or used manufactured home on or after the effective date of this Act. A sale, exchange, or lease-purchase of a new or used manufactured home before the effective date of this Act is governed by the law in effect on the date of the sale, exchange, or lease-purchase, and the former law is continued in effect for that purpose.

SECTION 76. Except as otherwise provided by this Act, the changes in law made by this Act apply only to a license issued or renewed by the Texas Department of Housing and Community Affairs on or after January 1, 2008. An issuance or renewal that occurs before January 1, 2008, is governed by the law in effect immediately before that date, and the former law is continued in effect for that

purpose.

SECTION 77. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 78. The changes in law made by this Act to provisions of the Tax Code apply only to an ad valorem tax year that begins on or after January 1, 2008. The changes in law made to those provisions do not affect a tax lien that attached to property for a tax year that began before January 1, 2008, and the law in effect immediately before January 1, 2008, is continued in effect for purposes of the tax lien.

SECTION 79. This Act takes effect January 1, 2008.

President of the Senate

Speaker of the House

I certify that H.B. No. 1460 was passed by the House on April 26, 2007, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1460 on May 24, 2007, by the following vote: Yeas 142, Nays 4, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1460 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

80TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB 1461

signature of **primary** author | printed name of **primary** author: BILL ZEDLER | Date: 2/14/07

PERMISSION TO SIGN HB 1461 (bill or resolution #) HAS BEEN GIVEN TO **(check only one of the following)**:

✓ ALL REPRESENTATIVES

_____ THE FOLLOWING REPRESENTATIVE(S): _____

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2100 Allen	Date	A2450 Cook, Byron	Date	A2795 Farabee	Date
A2125 Alonzo	Date	A2565 Cook, Robby	Date	A2820 Farias	Date
A2150 Anchia	Date	A2595 Corte	Date	A2810 Farrar	Date
A2155 Anderson	Date	A2605 Crabb	Date	A2840 Flores	Date
A2145 Aycock	Date	A2610 Craddick	Date	A2850 Flynn	Date
A2160 Bailey	Date	A2615 Creighton	Date	A2860 Frost	Date
A2205 Berman	Date	A2640 Crownover	Date	A2920 Gallego	Date
A2230 Bohac	Date	A2645 Darby	Date	A2915 Garcia	Date
A2240 Bolton	Date	A2620 Davis, John	Date	A2960 Gattis	Date
A2250 Bonnen	Date	A2625 Davis, Yvonne	Date	A2945 Geren	Date
A2280 Branch	Date	A2680 Delisi	Date	A2935 Giddings	Date
A2265 Brown, Betty	Date	A2690 Deshotel	Date	A2910 Gonzales	Date
A2270 Brown, Fred	Date	A2705 Driver	Date	A4660 Gonzalez Toureilles	Date
A2255 Burnam	Date	A2665 Dukes	Date	A2990 Goolsby	Date
A2295 Callegari	Date	A2660 Dunnam	Date	A3045 Guillen	Date
A2495 Castro	Date	A2650 Dutton	Date	A3035 Haggerty	Date
A2585 Chavez	Date	A2775 Eiland	Date	A3050 Hamilton	Date
A2480 Chisum	Date	A2780 Eissler	Date	A3100 Hancock	Date
A2525 Christian	Date	A2785 Elkins	Date	A3160 Hardcastle	Date
A2425 Cohen	Date	A2805 England	Date	A3150 Harless	Date
A2435 Coleman	Date	A2800 Escobar	Date	A3165 Harper-Brown	Date

Bill or Resolution Number: HB 1461

11/06 06D 111.IND

A3170 Hartnett	Date	A3730 Mallory Caraway	Date	A4200 Puente	Date
A3175 Heflin	Date	A3780 Martinez	Date	A4230 Quintanilla	Date
A3155 Hernandez	Date	A2835 Martinez Fischer	Date	A4215 Raymond	Date
A3140 Herrero	Date	A3665 McCall	Date	A4220 Riddle	Date
A3250 Hilderbran	Date	A3650 McClendon	Date	A4250 Ritter	Date
A3275 Hill	Date	A3845 McReynolds	Date	A4270 Rodriguez	Date
A3305 Hochberg	Date	A3830 Menendez	Date	A4350 Rose	Date
A3290 Hodge	Date	A3840 Merritt	Date	A4525 Smith, Todd	Date
A3325 Homer	Date	A3825 Miles	Date	A4540 Smith, Wayne	Date
A3330 Hopson	Date	A3835 Miller	Date	A4530 Smithee	Date
A3315 Howard, Charlie	Date	A3860 Moreno	Date	A4505 Solomons	Date
A3310 Howard, Donna	Date	A3870 Morrison	Date	A4545 Strama	Date
A3340 Hughes	Date	A3865 Mowery	Date	A4565 Straus	Date
A3375 Isett	Date	A3875 Murphy	Date	A4570 Swinford	Date
A3350 Jackson	Date	A3885 Naishtat	Date	A4585 Talton	Date
A3405 Jones	Date	A3900 Noriega	Date	A4600 Taylor	Date
A3480 Keffer	Date	A3880 Oliveira	Date	A4630 Thompson	Date
A3470 King, Phil	Date	A3886 Olivo	Date	A4650 Truitt	Date
A3460 King, Susan	Date	A3930 Orr	Date	A4685 Turner	Date
A3465 King, Tracy	Date	A3940 Ortiz, Jr.	Date	A4700 Van Arsdale	Date
A3495 Kolkhorst	Date	A3945 Otto	Date	A4780 Vaught	Date
A3485 Krusee	Date	A4090 Parker	Date	A4725 Veasey	Date
A3450 Kuempel	Date	A4050 Patrick	Date	A4800 Villarreal	Date
A3520 Latham	Date	A4100 Paxton	Date	A4900 Vo	Date
A3540 Laubenberg	Date	A4140 Pena	Date	A4995 West	Date
A3560 Leibowitz	Date	A3240 Pierson	Date	A5005 Woolley	Date
A3610 Lucio, III	Date	A4160 Phillips	Date	A5150 Zedler	Date
A3705 Macias	Date	A4180 Pickett	Date	A5170 Zerwas	Date
A3715 Madden	Date	A4185 Pitts	Date	District 29	Date

H.B. No. 1460 By Patrick B. Haggerty

A BILL TO BE ENTITLED
AN ACT

relating to the licensing, acquisition, and regulation of manufactured housing.

FEB 14 2007 Filed with the Chief Clerk

FEB 20 2007 Read first time and referred to Committee on Licensing & Administrative Procedures

MAR 20 2007 Reported ____ favorably ([redacted])
(as substituted)

APR 17 2007 Sent to Committee on (Calendars)
([redacted])

APR 25 2007 Read second time (comm. subst.) (amended); passed to third reading ([redacted]) by a (non-record vote)
([redacted])

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting

APR 26 2007 Read third time (amended); finally passed ([redacted]) by a ([redacted])
(record vote of 144 yeas, 0 nays, 1 present, not voting)

APR 26 2007 Engrossed

APR 27 2007 Sent to Senate

Robert Haney
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

APR 27 2007 Received from the House

BUSINESS AND COMMERCE

MAY 01 2007 Read and referred to Committee on _____

_____ Reported favorably _____

MAY 15 2007 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

_____ Ordered not printed

MAY 22 2007 Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

~~MAY 22 2007~~ Read second time, _____, and passed to third reading by ~~(unanimous consent)~~
~~(a viva voce vote)~~
(~~_____ yeas, _____ nays~~)

MAY 22 2007 Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 22 2007 Read third time, _____, and passed by a ~~(viva voce vote)~~
(31 yeas, 0 nays)

_____ Returned to the House

Patsy Spaw
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 22 2007 Returned from the Senate (as substituted)
[redacted]

MAY 24 2007 House concurred in Senate amendments by a [redacted]
(record vote of 142 yeas, 4 nays, 1 present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

House conferees appointed: _____, Chair; _____,

_____, _____, _____

Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____, _____

Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

07 APR 17 AM 1:26
HOUSE OF REPRESENTATIVES

07 MAY 22 PM 5:30
HOUSE OF REPRESENTATIVES