SUBJECT: Revising regulation of sale and ownership of manufactured homes

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 5 ayes — Solomons, Flynn, Gutierrez, Hopson, Paxton

0 nays

2 absent — Christian, Wise

WITNESSES: (*On original version:*)
For — Jody Anderson, Texas Manufactured Housing Association; William D. Beville, Private Schools Interscholastic Association, Inc.; Edward Caudill, Fleetwood Enterprises; John H. Diffendal, Texas Manufactured Housing Association; (*Registered, but did not testify:*) Bill Hammond, Texas Association of Business; Carol Peters

Against — Matthew Breston; Jim Hudspeth, Johnson County Appraisal District; Kevin Jewell, Consumers Union; John C. Matthews, Johnson County Commissioner Precinct 2; Rob Orr; John Rothermel, Stewart Title; Troy Thompson, Johnson County Commissioner Precinct 4

On — Karen Neeley, Independent Bankers Association of Texas; (*Registered, bud did not testify:*) Joe Garcia, Texas Department of Housing and Community Affairs; Timothy Irvine, Texas Department of Housing and Community Affairs

BACKGROUND: The Manufactured Housing Standards Act (V.T.C.S., Title 83, ch. 16, art. 5221f) sets minimum standards for construction and installation of manufactured housing, requires registration of manufactures and sellers of manufactured housing, and provides certain rules for those registrants and their activities. The Texas Department of Housing and Community Affairs (TDHCA) administers the act.

Classifying manufactured homes. The 77th Legislature enacted HB 1869 by Wohlgemuth, amending Property Code, sec. 2.001 to state that a manufactured home is real property unless it is placed:

- on a lot, whether permanently or temporarily that is not titled in the name of the consumer under a deed or contract for sale; or
- in a manufactured home rental community.

It also prohibits TDHCA from issuing a title for a manufactured home when it is:

- new and untitled;
- undergoing its first retail sale; and
- planned for permanent installation by a retailer directly on land titled in the name of the consumer under a deed or contract for sale.

In regard to a manufactured home resold by a retailer to be installed permanently on real property titled in the name of the consumer under a deed or contract for sale, the retailer's agent must file a notice of installation with the county and TDHCA. The installation notice serves as an application for cancellation of title.

Sec. 19A of the Manufactured Housing Standards Act classifies and taxes manufactured homes as real property if the real property to which the home is attached — the land — is in the name of the consumer under a deed or contract for sale. A manufactured home is permanently attached to real property if the home is:

- secured to a foundation; and
- connected to a utility providing water, electric, natural gas, propane or butane gas, or wastewater services.

If a manufactured home is permanently affixed or becomes an improvement to real estate, the manufacturer's certificate or the original document of title must be surrendered to the TDHCA for cancellation. Unless a lien on the manufactured home has been recorded with the department, TDHCA must issue a certificate of attachment to real property to the person who surrenders the manufacturer's certificate or document of title.

Remedies. The 75th Legislature enacted Finance Code, sec. 347.355 authorizing a creditor, after notice, to remove a manufactured home from land as if the home were personal property under the Business and Commerce

Code. It also enacted sec. 347.356, requiring creditors to comply with the regulations of the federal Office of Thrift Supervision relating to the disclosure required for repossession, foreclosure, or acceleration except in extreme circumstances, including abandonment or voluntary surrender of the manufactured home. The Office of Thrift Supervision adopted 12 CFR Chapter 5, part 590.4(h), which states that:

- a creditor of manufactured housing must send a debtor notice 30 days in advance of repossessing, foreclosing, or accelerating payment of a manufactured housing debt;
- the creditor's notice must be sent by registered or certified mail with return receipt requested; and
- the debtor is not entitled to notice of default more than twice in any one-year period, assuming that the debtor cures the first default within 30 days of the postmark of the first notice.

The regulation requires the notice to contain specific information, including the name of the creditor, the debtor's right to cure the default within 30 days, and the acts necessary to cure the default.

Property Code, sec. 51.002 states that a sale of real property under a power conferred by a deed of trust or other contract lien must:

- be a public sale at auction between 10 a.m. and 4 p.m. of the first Tuesday of a month;
- take place at the county courthouse in the county in which the land is located;
- be preceded by a notice of sale at least 21 days in advance, which must include a statement of the earliest time at which the sale will begin;
- occur at the time stated in the notice of sale or not later than three hours after that time.

The real property creditor must serve a debtor in default with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien, and must give the debtor at least 20 days to cure the default before notice of the sale.

DIGEST:

CSHB 1009 would amend and repeal various statutes affecting the sale and ownership of manufactured homes under the Manufactured Housing Standards Act.

Classifying manufactured homes. The bill would stipulate that a manufactured home is personal property and would classify a manufactured home as real property only if:

- the home was permanently attached to real property titled in the name of the consumer under a deed or contract for sale;
- the manufacturer's certificate of origin or original title was surrendered for cancellation; and
- a notice or certificate of attachment issued by TDHCA was filed in the records of the county where the home was located.

Also, a manufactured home could be real property if the home owner entered into a lease for the real property where the home was located and the lease specifically permitted the recording of a notice of attachment or a certificate of attachment.

TDHCA would be required to issue title at the first retail sale of a new manufactured home or for a titled home at a subsequent sale of the home, regardless of whether the home was temporarily or permanently installed on real property titled in the name of the consumer.

The bill similarly would amend the act to authorize, not require, a person to surrender title to a manufactured home to the TDHCA after the home was attached permanently to real property. It no longer would require a title company or attorney to file notice of the home installation with the department, which serves as application to cancel title under current statute.

Disclosures. The bill would amend the act to require consumers to receive notice before they could complete credit applications for manufactured home purchases, including disclosure that:

- the consumer could acquire the manufactured home by a real estate or a chattel mortgage and that a real estate mortgage might have a lower interest rate than a chattel mortgage;

- the manufactured home would be appraised and subject to ad valorem taxes as would other single-family residential structures, with an exception;
- the consumer could rescind, without penalty or charge, a purchase, exchange, or lease-purchase contract for the manufactured home, but not later than the third day after signing the contract;
- the lender could require the consumer to obtain insurance meeting the lender's requirements to protect the consumers investment; and
- the consumer would have to install a septic tank system on a lot not serviced by a sewer system or utility.

In regard to a chattel mortgage installment contract for the purchase of a manufactured home, the retailer would have to deliver the disclosures, signed by the lender, at least 24 hours before full execution of the contract. The bill would prohibit the consumer from accepting the offer within 24 hours after delivery of the documents.

The bill would repeal the disclosure requirement that "if the manufactured home is your principal place of residence, you should be able to claim a HOMESTEAD EXEMPTION" in the context of a provision requiring notice of ad valorem taxes, which the bill also would repeal. It would amend the act to require at least 12-point type, instead of 10-point type, for all notices that manufactured housing retailers would have to provide consumers before the completion of a credit application.

Protections. CSHB 1009 would require a retailer estimate to be in good faith and in writing if it stated the contract price of a manufactured home, monthly payments, or interest rate of a chattel mortgage transaction. The bill would authorize a retailer to require an earnest money deposit on a specially ordered manufactured home if:

- all parties signed an earnest money contract;
- the original loan commitment letter issued by the lender, if one existed was delivered to the consumer; and
- the consumer had not rescinded the contract under the act.

A retailer could not require a consumer to make a down payment on the acquisition of a manufactured home until the parties executed an installment contract.

Enforcement. The bill would amend regulation and enforcement provisions of the act by:

- requiring people involved directly in the sale of a manufactured house to complete eight hours of certification and continuing education programs each year;
- requiring the TDHCA to suspend the license of a person regulated under the chapter who did not complete the programs as required; and
- requiring the TDHCA to reinstate the license upon the person's completion of the programs.

TDHCA's director could not suspend the license of a manufactured home retailer for violating only one disclosure requirement under the act. The director could suspend the license of a retailer of manufactured homes for a second and subsequent violations. The director also could revoke a retailer's license for any subsequent violation.

CSHB 1009 would add a provision authorizing a fine of $1,000 against a person who moved a manufactured house over a highway, road, or street without a permit. A second violation could result in a fine of $2,000 with subsequent violations resulting in fines up to $4,000 each. These fines would apply only to offenses committed on or after the effective date of the bill.

Taxes. The bill would amend the Finance Code to make manufactured homes appraised and subject to the same ad valorem tax as single-family residential structures. It would require the buyer to pay ad valorem taxes on the manufactured home through the creditor. The requirement would not apply in the case of a real property transaction involving a manufactured home if the lender did not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by the residential real property.

The Tax Code would be amended to stipulate that, if the home owner received a certificate of attachment from TDHCA and owned the land where the home

was affixed, the manufactured home would have to be appraised and taxed as an improvement to the land. The tax lien would attach to the real property on which the home was affixed. This condition would apply regardless of whether the home was personal or real property under the Property Code.

If the manufactured home owner was not issued a certificate of attachment, then the home, as personal property, would be appraised and taxed separately at the same rate as other single-family homes. A tax lien would not attach to the real property if the homeowner was not issued a certificate of attachment.

Tax Code changes would apply only to an ad valorem tax year beginning on or after January 1, 2004.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

By restoring manufactured houses to their former classification as personal property, CSHB 1009 would unburden consumers, retailers, and manufacturers and reignite industry growth. An act of the 77th Legislature to classify the houses as real property artificially has depressed the industry by causing slower sales and production. As a consequence, creditors curtailed chattel (i.e., movable, personal property) lending for financing purchases, and sales fell 35 percent during the one-year period following enactment of the law. This bill simply would restore the personal property classification of the houses to revive personal property lending for manufactured housing and encourage demand for the product.

Even with higher interest rates for personal property loans, many buyers would have an incentive to use them. Personal property loans for manufactured homes would allow buyers to sever the homes from their land — either to move or to sell the manufactured home and replace it with different construction — free from prohibitions often present in real property loans. Yet buyers still would have the option to structure manufactured housing purchases as real property loans.

The bill would enact more consumer protections, including notices, in concert with restoring access to personal property loans as a means of financing the

purchase of manufactured homes. Historically, simplified lending practices and creditor recourse rights have helped the industry serve consumers who wanted to build home equity but who could not afford traditional houses. Imposing more disclosure and other requirements on retailers and clarifying regulatory standards and penalties properly would balance any risk to consumers by providing them information and strengthening basic industry standards.

Local communities would benefit from additional revenue because the bill

would require payment, through the creditor, of ad valorem taxes on the purchased homes.

OPPONENTS SAY:

Weakened demand for manufactured houses is unrelated to the proper classification of the houses as real property. HB 1869 reclassifying the houses as real property did not take effect until January 2002, but the trend of dropping sales dates back to 2000. In that year, sales of manufactured homes in Texas dropped 17 percent, and sales dropped 32 percent in 2001. Retailers nevertheless continue to sell thousands of manufactured houses each year, demonstrating that options abound for financing these homes. In addition, current law does not prohibit any particular method for financing the homes. The real causes of sluggish sales in the industry are a slowing economy and publicity surrounding the repossession of manufactured houses, including revelations of high interest rates for personal property loans.

CSHB 1009 could hamper recovery and long-term growth in the manufactured housing industry. The current classification of the houses as real property reflects efforts by industry, through design improvement and marketing, to make this housing option more attractive to consumers. This classification gives manufactured houses legal treatment equal to that of traditional houses, thus helping industry to legitimize and market its product.

The bill, however, would take away basic legal protections from purchasers of manufactured houses that are afforded to residents of traditional houses and apartments. Owners of real property receive at least 41 days notice before public auction of their property and have the express right to cure any default. Eviction following an auction requires a judicial proceeding, as does the eviction of tenants by landowners. By contrast, the classification of

manufactured homes as personal property would authorize creditors to repossess residences and evict residents without granting them the express right to cure a loan default or any right to a judicial proceeding.

OTHER OPPONENTS SAY:

The bill should add more protections for purchasers of manufactured homes, especially in regard to repossession procedures under Finance Code, Ch. 347. The federal regulations governing repossession, foreclosure, and acceleration should be enacted as state law, because busy trial judges often do not reference the un-cited federal regulation. It also should be improved to require that a debtor receive more than two notices of default in any one-year period, assuming they cured the prior defaults within 30 days, and first-class mail delivery of a default notice should the creditor send notice by only registered, not certified, mail. Postal service notices of registered mail held at the post office easily can be overlooked.

NOTES:

Among other changes, the committee substitute differs from the bill as introduced by removing away liability protection for employers in connection with the acts of their employees. It also would define penalties for moving a manufactured home without a permit and would suspend, rather than require forfeiture of, a retail license for failing to complete certification and continuing education under TDHCA.

The committee substitute also would impose additional contracting requirements for manufactured houses, including:

- printing disclosures in 12-point type;
- extending a right of contract rescission to buyers and disclosing this right;
- requiring that buyers have the chattel loan contract at least 24 hours before signing it; and
- disclosing to buyers that real property loan rates might be cheaper than personal property loans.