

SUBJECT: Modifying licensing, acquisition, and regulation of manufactured housing

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Flores, Geren, Goolsby, Hamilton, Jones, Thompson

0 nays

3 absent — Isett, Miles, Quintanilla

WITNESSES: For — Sherman Krause, Tax Assessor-Collectors Association of Texas; Larissa Philpot, city of Nacogdoches; (*Registered, but did not testify*: Jody Anderson, Texas Manufactured Housing Association; Luanne Caraway and Travie Murphy, Tax Assessor-Collectors Association of Texas)

Against — Kevin Jewell

On — (*Registered, but did not testify*: Tim Irvine, Texas Department of Housing and Community Development)

BACKGROUND: The Texas Manufactured Housing Standards Act (Occupations Code, ch. 1201) regulates the construction and installation of manufactured housing, requires registration of manufacturers and sellers of manufactured housing, and provides certain rules for those registrants and their activities. The manufactured housing division of the Texas Department of Housing and Community Affairs (TDHCA) administers the act and maintains a database of manufactured homes. Construction standards for manufactured housing also are regulated by the U.S. Department of Housing and Urban Development (HUD).

Under Occupations Code, sec. 1201.1521, a person who acquires a manufactured home by purchase, exchange, or lease-purchase may rescind the applicable contract without penalty or charge within three days after signing the contract.

The Tax Code establishes standards for the valuation and exemption of manufactured housing in Texas. Sec. 11.432 provides for a homestead tax exemption for manufactured housing upon application for the exemption

with submission of a copy of the statement of ownership and location for the manufactured home showing that the individual applying for the exemption is the owner of the manufactured home. Sec. 32.03 prohibits the transfer of a title of a manufactured home until all tax liens recorded on the home have been satisfied and released.

DIGEST:

CSHB 1460 would modify various provisions of the Manufactured Housing Standards Act and certain sections of the Tax Code and Government Code. The bill would separately define new and used manufactured housing, revise procedures related to the enforcement and collection of personal property taxes and the handling of liens, grant homeowners in municipalities a right to replace existing manufactured housing, modify consumer processes, and expand TDHCA's authority to enforce provisions regarding housing quality, licensing, and warranties.

Property tax and lien revisions. CSHB 1460 would prohibit the enforcement of a tax lien against the owner of a new manufactured home who acquired the home from a retailer in the ordinary course of business. Purchasers of new manufactured homes would own the home free of all liens and would be entitled to a statement of ownership and location. Purchasers of used manufactured homes would assume any subject recorded liens, and a selling retailer would be responsible for lien dispensation. A taxing unit would not be able to use a tax warrant or other method to attempt to execute or foreclose on a manufactured home unless the unit filed a tax lien with TDHCA in a timely manner.

County tax assessor-collectors would be responsible for filing any appropriate tax liens on manufactured housing. Selling owners would have to file any tax certificates with TDHCA prior to transferring any manufactured homes, and county assessor-collectors would have to furnish prospective buyers with an estimate of any personal property taxes that had not been levied on the property. Tax collectors would notify new owners of any expenses derived from the difference between certified taxes and the amount actually paid.

The bill would guarantee that owners of manufactured housing could claim homestead exemptions irrespective of whether the owner had elected to treat the manufactured home as real property or personal property or whether the home was listed in conjunction with associated land. Owners seeking tax exemptions would be able to submit with the

application a copy of the current title or computer records of the manufactured housing maintained by TDHCA.

Right of replacement. The bill would allow the owner of an existing manufactured home to replace the home with another at least as large in living space on the same lot regardless of municipal zoning regulations or other laws.

Consumer processes. A consumer's right to rescind a contract would be applicable only to a transaction between a retailer and a consumer, and not a third-party lender. Consumers would be able to modify or waive this right for reasons of a personal financial emergency. Retailers would be required to provide consumers with a written disclosure addressing matters of concern relating to the purchase and financing of manufactured housing and clearly alerting consumers as to their right to rescind any of contract within three days of signing. Added disclosure rules would apply to contracts not subject to external financing.

The bill would require retailers to submit a manufacturer's certificate to TDHCA following a sale and would modify contents of the statement of ownership and location provided to consumers upon sale. Procedures regarding the issuance of revised statements of ownership and location would be revised. Sellers would be required to file with the department a written statement from the tax assessor-collector verifying that no personal property taxes had accrued on the home during the 18-month period preceding the transaction.

Housing quality. A political subdivision that identified a manufactured home within its jurisdiction as scrapped, dismantled, or destroyed would be able to impose an inspection, a requirement for corrective action, or another action as appropriate to remediate the home if it posed a threat to public health or safety. A license holder that participated in the sale, exchange, lease-purchase, or installation of a scrapped, dismantled, or destroyed manufactured home for occupancy as a residence would be subject to penalties, including a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Licensing and regulation. New home installation licensees would be subject to probation pending the completion of a sufficient number of installations as determined by TDHCA to be granted full licensee status. The bill would simplify and expand the applicability of continuing

education requirements for license holders and would require all licensees to renew every two years.

TDHCA could issue an order to revoke, suspend, or deny a new or renewal license and set a hearing to be conducted by the State Office of Administrative Hearings (SOAH). Penalties could be conditioned on a number of factors, including the severity of the violation and history of previous violations. Criminal penalties could be assessed for unlicensed actions. TDHCA also would be able to issue a cease-and-desist order if it had reasonable cause to believe a licensee had violated or intended to violate a provision regulating the sale or construction of manufactured housing.

Warranties. The bill would add provisions placing joint responsibility of the warranty of installation of any new manufactured homes constructed to HUD code standards on the installer and retailer of the housing. TDHCA would be empowered to determine whether a complaint was covered by warranty and order the installer to perform corrective action. Retailers would be responsible for performing corrections in the absence of remedial action by installers and would be permitted to seek from the installer restitution for any necessary modifications. Retailers also would be charged with conveying to new owners the installation warranty.

Manufacturers, retailers, or installers failing to provide warranty service would be subject to an informal meeting that could result in a resolution, a dismissal of the complaint, or administrative actions brought against the licensee. TDHCA would be authorized to order a license holder to correct structural defects or to direct another licensee to correct the installation and receive reimbursement accordingly. The bill would allow retailers to expressly disclaim or limit any warranty regarding cosmetic defects.

The bill would repeal provisions governing chattel mortgage disclosure forms, arbitration agreements among disputants, and provisions regarding sanctions and penalties imposed by the Manufactured Housing Board (MHB).

The bill would take effect September 1, 2007. The proposed changes affecting the Tax Code or a tax lien would apply beginning in tax year 2008.

SUPPORTERS
SAY:

Property tax reform. CSHB 1460 would extend important consumer protections to purchasers of manufactured housing. Buyers of new manufactured housing would be insulated from the enforcement of unwarranted tax liens, and tax collectors would not be able to collect taxes unless they properly recorded the tax lien by filing it with TDHCA. A person would not be allowed to sell a manufactured home until all tax liens were properly filed and personal property taxes that accrued yearly were satisfied. Provisions requiring taxing units to calculate property tax estimates for manufactured housing buyers would improve buyer awareness and help protect against future delinquency.

CSHB 1460 would clarify provisions governing the applicability of homestead exemptions to manufactured housing. The bill would resolve inconsistencies in county practices concerning whether exemptions should be applied to personal property or the associated real property. Clarifying that homestead exemptions apply to manufactured housing listed as personal property would ensure that owners of such housing got their fair share of the exemption regardless of how their property was classified.

Consumer protections. CSHB 1460 would ensure that purchasers of manufactured housing were protected from a number of abusive practices. The bill would grant manufactured housing residents the right to upgrade their homes irrespective of municipal zoning practices. This would resolve unfair situations that can arise when city ordinances effectively prevent manufactured housing owners from improving their living situation by upgrading improvements.

The bill would strengthen, clarify, and update a number of provisions regulating warranties for manufactured housing. Enhanced enforcement options would ensure that buyers and owners received protection from the state necessary to uphold warranty provisions. Clarified requirements for the disclosure of information to buyers and greater discretion on the part of the MHB would allow disclosure forms to be more carefully tailored to the types of information most valuable for buyers. Consumers also would be protected from unsafe housing that presents a public hazard when left unregulated by municipalities and other political subdivisions. A person who promoted the sale or transfer of uninhabitable housing would face strong deterrents in enhanced penalties.

The bill would ensure that a consumer's right to rescind an agreement was upheld in law and would not disrupt additional safeguards contained in

statute, such as Occupations Code sec. 1201.164. Waivers of a purchaser's right to rescind only could take place in the context of demonstrable emergencies and would be sufficiently narrow as to minimize abuse. The bill would place the burden on retailers to verify the existence of liens on sold properties and provide notice when necessary. Buyers of used manufactured housing would be adequately protected, since retailers would have to assume any liabilities associated with recorded liens.

Streamlined administration. The bill would enhance various administrative and regulatory functions of the manufactured division in TDHCA. By updating licensing requirements, continuing education, conflict of interest provisions, the electronic accessibility of documents, and expanding enforcement capacity, the bill would help streamline TDHCA operations and allow the department to operate more efficiently and to more effectively protect consumers of manufactured housing.

OPPONENTS
SAY:

CSHB 1460 would make certain revisions to a buyer's right to rescind a contract for a manufactured home that could give rise to abuse. The bill would provide that if a consumer granted a person other than a retailer a lien on a manufactured home, that person's right to rescind a contract would cease when the lien was filed with TDHCA. This could create a potential loophole for retailers that use third-party financing involving the imposition of a lien. The purchaser's right to rescind in this case could prematurely be terminated. Permitting buyers to waive their right to rescind a contract in the event of a personal financial emergency also would add provisions that could also be abused, since there would be no clear standards available to determine what constitutes such an emergency.

CSHB 1460 would not afford equal protection to buyers of new and used manufactured housing. The bill would insulate purchasers of new manufactured housing from outstanding liens but would not extend this same immunity to buyers of used manufactured housing. It would leave open the possibility for situations in which retailers were not able to cover the entire cost of the lien. In these cases, the buyer could be responsible for paying the balance due for recorded liens.

CSHB 1460 also would place additional reliance on the centralized filing of liens and associated documents with TDHCA. This practice could be problematic, because filing obligations fall heavily on counties and current procedures are not always able to account for the location of manufactured housing. Retailers should play a larger role in verifying the location of

manufactured housing and helping ensure that any tax liens were properly carried from originating counties in the event of relocation.

OTHER
OPPONENTS
SAY:

Occupations Code, sec. 1201.008 allows for the replacement of any mobile home with a HUD-code manufactured home on the same lot regardless of zoning and other regulations. While most municipalities have ordinances that allow for the replacement of manufactured homes, some municipal ordinances in Texas have vacancy clauses stating that if such a home remains vacant for a specified period, it cannot be replaced by a similar structure. This is especially common in coastal communities that proactively are trying to raise construction standards to minimize damage caused by hurricanes and tropical storms. CSHB 1460 would prohibit these communities from including vacancy clauses in their ordinances and could impede local efforts to establish legitimate housing standards in their communities.

NOTES:

Rep. Haggerty plans to accept a floor amendment striking the provisions in the bill making the MHRTF a dedicated fund held in trust.

The committee substitute made numerous changes to the bill as introduced including the following:

- the committee substitute redefined “used manufactured housing” as a manufactured home for which a statement of ownership has been issued or a home that has been occupied for any use, excluding a home used as a sales model at a licensed retail location or a home that was sold as a new home but was never occupied and was taken back from the consumer because of a first payment default or other agreement to rescind;
- the substitute added provisions modifying regulation of license holders and simplifying continuing education requirements for licensees;
- the substitute included statutes modifying procedures for an informal dispute resolution process and providing for appeals of final determinations arrived at as part of the process;
- the substitute added provisions allowing a political subdivision that identified a manufactured home within its jurisdiction as a salvaged home to impose an inspection, requirement for corrective action, or other action to remediate a threat to public health or safety; and

- the substitute added a section defining and enhancing cease-and-desist orders that the director of TDHCA could issue license holders in response to objectionable actions.

According to the Legislative Budget Board (LBB), the bill would have a cost of approximately \$2.1 million in fiscal 2008-09. The LBB estimates that the bill's establishment of the Manufactured Homeowner's Recovery Trust Fund (MHRTF) as a dedicated fund would divert about \$900,000 per year from general revenue. Additional expenses incurred from the hiring of an additional attorney for work related to adoption of the new rules and implementation of the bill is estimated at nearly \$139,000 for fiscal 2008 and some \$77,000 each year thereafter.

SB 1320 by Harris, a related bill that deals with the licensing, acquisition, regulation, and taxation of manufactured housing, has been referred to the Senate Business and Commerce Committee.