

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2703
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State Affairs
5-15-97
Committee Report (Substituted)

DIGEST

The mobile home/manufactured housing industry has been regulated by the State of Texas since 1969. As a result of the passage of H.B. 785 by the 74th Legislature, the regulation of the manufactured housing industry was moved from the Texas Department of Licensing and Regulation to the Texas Department of Housing and Community Affairs, effective in 1995. Since that time, changes in federal regulations, and concerns of homeowners, have raised questions about the industry. CS.H.B. 2703 would make changes to the Texas Manufactured Housing Standards Act regarding the regulation of manufactured housing.

PURPOSE

As proposed, C.S.H.B. 2703 outlines provisions and provides penalties regarding the regulation of manufactured housing.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the executive director of the Texas Department of Housing and Community Affairs under SECTION 8 (Section 9, Article 5221f, V.T.C.S.), SECTION 21 (Section 623.095(c), Transportation Code) and SECTION 22 (Section 623.096(b), Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3, Article 5221f, V.T.C.S. (Texas Manufactured Housing Standards Act), to define "advertising," "advertisement," "alteration," "board," "broker," "code," "consumer," "department," "director," "HUD-code manufactured home," "installation," "installer," "label," "lease-purchase," "license holder," "manufactured housing," "manufactured home," "manufacturer," "mobile home," "person," "retailer," "salesperson," and "seal." Deletes existing definitions.

SECTION 2. Amends Section 3A, Article 5221f, V.T.C.S., to provide that the definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" set forth in Section 3 of this Act, rather than article. Prohibits the terms "mobile home," HUD-manufactured home," and "manufactured housing" from being defined in any manner which is not identical to the definitions set forth in Section 3 of this Act.

SECTION 3. Amends Sections 4(f), (g), (h), and (i), Article 5221f, V.T.C.S, to require the Texas Department of Housing and Community Affairs (department) to establish an inspection program whereby at least 25 percent of the manufactured homes installed are inspected on a random sample basis for compliance. Requires the department's program to place priority on multi-section homes and homes installed in Wind Zone II. Requires a local government unit to show good cause by substantial evidence that the public health and safety require different standards. Requires the executive director of the department (director) to publish a notice and conduct a public hearing under Section 9 of this Act, rather than in accordance with Chapter 2001, Government Code, not sooner than the 30th day following the publication of notice. Makes a conforming change.

SECTION 4. Amends Section 6, Article 5221f, V.T.C.S., by amending Subsections (e), (f), (g), and (h), and by adding Subsection (l), to provide that it is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person

in the state other than a licensed, rather than registered, retailer. Provides that it is unlawful for a salesperson to aid or assist a consumer in preparing or in providing any false or misleading information on a document related to the purchase or financing of a manufactured home or for a salesperson to submit any information known to be false or misleading to a retailer or to a credit underwriter. Makes conforming changes.

SECTION 5. Amends Article 5221f, V.T.C.S., by adding Section 6B, as follows:

Sec. 6B. WIND ZONE REGULATIONS. Sets forth counties located in Wind Zone II. Sets forth requirements regarding wind zone regulations.

SECTION 6. Amends Section 7, Article 5221f, V.T.C.S., to prohibit a person from constructing or assembling a new HUD-code manufactured home in the state or ship a new HUD-code manufactured home into the state, unless the person is licensed, rather than registered, as a manufactured housing manufacturer with the department and possesses a valid manufacturer's license, rather than a certificate of registration, at the time the home is constructed or assembled. Requires each applicant for a license, rather than certificate or registration, as a rebuilder to file with the director an application for a license, rather than registration, containing certain information. Provides that while acting as an agent for a license holder, rather than registrant, an employee is covered by the business entity's license and is not required to be individually licensed. Sets forth instances in which the director is authorized, after notice and hearing under Section 9 of this Act, to refuse to issue or to permanently revoke, or suspend any license. Requires the director to conduct any hearing involving the denial, renewal, revocation or suspension of a license in accordance with Chapter 2001, Government Code. Provides that the regulation of air-conditioning contractors is exclusively reserved to the Texas Department of Licensing and Regulation. Deletes text regarding the applicability of this subsection. Requires each applicant for a salesperson's license to file with the director an application giving such information as the director deems necessary and pay the required fee. Provides that an officer of a corporation which is duly licensed as a retailer or broker does not have to apply for licensing as a salesperson so long as such individual is properly listed in the retailer's or broker's application for license. Requires any person not licensed or registered with the department or a predecessor agency as of September 1, 1987, to attend and complete 20 hours of instruction in the law and consumer protection regulations as a prerequisite for a license, rather than prior to any registration. Provides that this subsection does not apply to a registrant making application to license additional business locations, to renew or reinstate a license, or to make application for licensing as a salesperson. Authorizes the director to recognize and approve a training program, rather than one-day training program, in lieu of the instruction requirements imposed under Subsection (o), rather than (p), of this section. Sets forth requirements regarding the renewal of a license. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 7A, Article 5221f, V.T.C.S., as follows:

Sec. 7A. New heading: EDUCATION PROGRAMS. Authorizes the director to recognize, prepare, or administer certification programs for persons regulated under this Act. Requires the director to issue appropriate certificates to those persons who complete the certification program or who participate in the continuing education program.

SECTION 8. Amends Section 8(d), (f), and (h), Article 5221f, V.T.C.S., to require the seller or transferor to forward documents after the date the seller or transferor obtains possession of the necessary executed documents. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Sections 9(d), (e), (f), (g), and (m), Article 5221f, V.T.C.S., to define "rule." Provides that an administrative order which is not of general applicability but is directed to specific licensees relating to warranties, the correction of defects and compliance with the law and regulation is not a rule. Deletes text requiring the director to publish a certain notice. Requires all rules to be promulgated and adopted in accordance with Chapter 2001, Government Code, and with the provisions of this section. Deletes text requiring the director to afford interested persons an opportunity to participate in the rulemaking. Sets forth requirements regarding a proposed rule, amendment to a rule, or repeal of a rule.

SECTION 10. Amends Sections 11(c) and (d), Article 5221f, V.T.C.S., to make conforming changes.

SECTION 11. Amends Sections 13(a), (f), (g), (h), and (i), Article 5122f, V.T.C.S., to require a retailer to be bonded or post other security in the amount of \$50,000, rather than \$30,000. Requires any other security on file with the department to remain on file and be maintained for two years after the person ceases business as a manufacturer, retailer, broker, rebuilder, or installer. Makes conforming changes.

SECTION 12. Amends Sections 13A(e), (f), (g), and (k), to delete text requiring a consumer to file a verified written complaint. Makes conforming changes.

SECTION 13. Amends Section 14, Article 5221f, V.T.C.S., to set forth instances in which the seller of real estate is authorized to give the initial purchaser a written warranty which combines the manufacturer's and retailer's warranties which are required by this section. Provides that if this combination warranty is given, the manufacturer and retailer do not have to give separate written warranties; however, each shall be jointly liable with the seller of the real estate to the purchaser for the performance of their respective warranty responsibilities. Makes conforming changes.

SECTION 14. Amends Section 17(b), Article 5221f, V.T.C.S., to make a conforming change.

SECTION 15. Amends Sections 18(d), (f), and (g), Article 5221f, V.T.C.S., to provide that a consumer's contract regarding a new manufactured home is voidable within two years from the date of the purchase of the home if the retailer purchased the home from an unlicensed, rather than unregistered, manufacturer in violation of Section 6(h) of this Act. Makes conforming changes.

SECTION 16. Amends Section 19(k), Article 5221f, V.T.C.S., to make a conforming change.

SECTION 17. Amends Section 3(8), Article 5069-6A.03, V.T.C.S., to provide that in a transaction not involving real estate, no fee for the preparation of credit documents shall be charged to the consumer and the only items, rather than fees, which can be charged to the consumer are those fees and taxes paid by the creditor as required by law or regulation and those paid on behalf of the consumer.

SECTION 18. Amends Section 6(f), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor Licensing Law), to outline provisions and delete text regarding the applicability of this article.

SECTION 19. Amends Section 623.093, Transportation Code, to set forth the information a permit is required to show if the manufactured home is being moved from or to a site in this state where it has been, or will be, occupied as a dwelling. Requires the department to send on a quarterly basis a copy of the permit, or furnish the essential information in the permit, to the chief appraiser of the appraisal district for each county in which the movement begins or ends if the permit shows additional information required by Subsection (d).

SECTION 20. Amends Section 623.094, Transportation Code, as follows:

Sec. 623.094. New heading: PERMIT ISSUANCE. Sets forth requirements and outlines provisions regarding permit issuance.

SECTION 21. Amends Section 623.095, Transportation Code, as follows:

Sec. 623.095. New heading: PERMIT TYPES. Outlines provisions regarding the issuance of certain types of permits.

SECTION 22. Amends Section 623.096, Transportation Code, to set forth requirements regarding the collection of permit fees. Deletes text regarding permit fees.

SECTION 23. (a) Effective date: September 1, 1997.

(b) Provides that a certificate of registration that is valid immediately before the effective date of this Act remains valid until the expiration date of the registration.

(c) Provides that the increase in the bond for a retailer's license required by Section 11 of this Act is effective on September 1, 1997, for an initial license and is effective for a license holder on the date of renewal.

SECTION 24. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 3, Article 5221f, V.T.C.S., to add the definition of "license holder" and delete the definition of "registrant."

SECTION 2.

Amends Section 3A, Article 5221f, V.T.C.S., regarding definitions binding.

SECTION 3.

Amends Sections 4(f), (g), (h), and (i), Article 5221f, V.T.C.S., regarding an inspection program.

SECTION 4.

Amends Section 6, Article 5221f, V.T.C.S., by amending Subsections (e), (f), (g), (h), and adding Subsection (l), to make conforming changes.

SECTION 5.

Amends Section 6B, Article 5221f, V.T.C.S., regarding wind zone regulations.

SECTION 6.

Amends Section 7, Article 5221f, V.T.C.S., regarding registration.

SECTION 7.

Amends Section 7A, Article 5221f, V.T.C.S., regarding education programs.

SECTION 8.

Amends Sections 8(d), (f), (h), Article 5221f, V.T.C.S., to make conforming changes.

SECTION 9.

Amends Subsections (d), (e), (f), (g), and (m), Article 5221f, V.T.C.S., regarding rules.

SECTION 10.

Amends Sections 11(c) and (d), Article 5221f, V.T.C.S., to make conforming changes.

SECTION 11.

Amends Sections 13(a), (f), (g), (h), and (i), Article 5221f, V.T.C.S., regarding surety bonds.

SECTION 12.

Amends Sections 13A(e), (f), (g), and (k), Article 5221f, V.T.C.S., to make conforming changes.

SECTION 17.

Amends Section 3(8), Article 5069-6A.03, V.T.C.S., regarding a certain transaction.

SECTION 18.

Amends Section 6(f), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor Law), regarding installation of air conditioning.

SECTION 19.

Amends Section 623.093, Transportation Code, regarding contents of application and permit.

SECTION 20.

Amends Section 623.094, Transportation Code, regarding permit issuance.

SECTION 21.

Amends Section 623.095, Transportation Code, regarding permit types.

SECTION 22.

Amends Section 623.096, Transportation Code, regarding permit fees.