

BILL ANALYSIS

Senate Research Center

S.B. 579
By: Harris
State Affairs
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As Filed

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. S.B. 579 would make changes to the Texas Manufactured Housing Standards Act regarding the regulation of manufactured housing.

PURPOSE

As proposed, S.B. 579 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.) 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 "Act," "advertising," "advertisement," "alteration," "board," "broker," "code," "consumer," "department," "director," "HUD-code manufactured home," "installation," "installer," "label," "lease-purchase," "manufactured housing," "manufactured home," "manufacturer," "mobile home," "person," "registrant," "retailer," "salesperson," and "seal." Deletes existing definitions.

SECTION 2. Amends Section 3A, Article 5221f, V.T.C.S., to prohibit 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. Provides that no manufactured home constructed on or after July 13, 1994, shall be installed in Wind Zone II unless the home was designed and constructed to meet or exceed federal construction and safety standards for Wind Zone II which became effective on that date. Sets forth counties within Wind Zone II. Requires purchasers of used manufactured homes constructed prior to July 13, 1994, to be given a notice by the selling retailer that the home was constructed prior to the effective date of the increased federal construction and safety standards for hurricane zones, and that the purchaser may not be allowed to install the home in Wind Zone II. Requires all manufactured homes installed in Wind Zone II before September 1, 1997, to be permitted to remain, and be relocated and 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 pursuant to the provisions of 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, before the adoption of any standards or requirements, any change in standards, or the approval of different

standards by any local governmental unit. 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 any 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 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. Provides that while acting as an agent for a licensee an employee is covered by the business entity's license and is not required to be individually licensed. Authorizes the director, after notice and hearing pursuant to the provisions of Section 9 of this Act, to refuse to issue or to permanently revoke, or suspend any license if the director finds that the applicant or licensee knowingly or willfully violated any provisions of this Act, rather than article, among other violations. Requires the director to conduct any hearing involving the denial, renewal, revocation or suspension of a license in accordance with Chapter 2001, Government Code. 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. Sets forth requirements regarding the renewal of a license. Makes conforming and nonsubstantive changes.

SECTION 6. 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 7. Amends Section 8, Article 5221f, V.T.C.S., to provide that it is unlawful for a person to sell, exchange, or lease-purchase any used manufactured home to a consumer for use as a residence without giving a written warranty that the home is habitable except as provided in this section. Provides that the consumer has 90, rather than 60, days after the date of the sale, exchange, or lease-purchase agreement to notify the seller in writing of any defects that make the home uninhabitable. Deletes text regarding the sale, exchange, or lease-purchase of a manufactured home. Deletes the definition of "business use." Sets forth provisions regarding a used manufactured home. Deletes a provision regarding a repossessed manufactured home. Deletes text regarding the authorization of a retailer to sell or exchange a used manufactured home. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Sections 9(d), (e), (f), (g), and (m), Article 5221f, V.T.C.S., to define "rule," and "rules." Provides that administrative orders which are not of general applicability but are directed to specific licensees relating to warranties, the correction of defects and compliance with the law and regulation are not rules. 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 all proposed rules,

amendments to rules, and repeal of rules. Makes a conforming change.

SECTION 9. Amends Sections 11(c) and (d), Article 5221f, V.T.C.S., to make conforming changes.

SECTION 10. 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 \$100,000, 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 11. Amends Sections 13A(e), (f), (g), and (k), to make conforming changes.

SECTION 12. 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.

SECTION 13. Amends Section 17(b), Article 5221f, V.T.C.S., to make a conforming change.

SECTION 14. 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 15. Amends Section 19(k), Article 5221f, V.T.C.S., to make a conforming change.

SECTION 16. Provides that for purposes of continuity in administration and enforcement, the terms "registration" and "certificate of registration" shall be a "license" until renewed as a license on expiration.

SECTION 17. Effective date: September 1, 1997.

SECTION 18. Emergency clause.
Effective date: upon passage.