

CHAPTER 84

H.B. No. 1218

An Act relating to the construction, installation, and location of industrialized housing and buildings and modular homes; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that there is great need to provide safe, durable code constructed housing and buildings and to encourage the economies realized through mass production and assembly line building techniques in order to produce and provide more affordable dwellings and buildings. It also finds that existing statutes and regulations are not adequate to coordinate properly the interests of both the state and local political subdivisions including home-rule cities. Thus, in recognition of these findings and to promote the public health, safety, and welfare, the legislature deems it necessary to regulate industrialized housing and buildings, and this Act shall be liberally construed and applied to encourage innovative building and construction techniques.

SECTION 2. Subsections (h), (q), and (w), Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are repealed and Subsection (s) of that section is amended to read as follows:

(s) "Manufactured housing" or "manufactured home" means a HUD-code manufactured home ~~or~~ a mobile home ~~or a modular home~~ and collectively means and refers to ~~both~~ ~~all~~ ~~three~~.

SECTION 3. Subsection (a)(3), Section 4, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is repealed.

SECTION 4. Subsection (b), Section 6, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is repealed.

SECTION 5. Title 83, Revised Statutes, is amended by adding Article 5221f-1 to read as follows:

Art. 5221f-1. INDUSTRIALIZED HOUSING AND BUILDINGS

Sec. 1. DEFINITIONS. In this article:

(1) "Industrialized housing" means a residential structure that is designed for the use and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include any residential structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. The term shall not mean nor apply to (i) housing constructed of sectional or panelized systems not utilizing modular components; or (ii) any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location.

(2) "Industrialized building" means a commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected or installed on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include any commercial structure that is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof.

(3) "Council" means the Texas Industrialized Building Code Council.

(4) "Department" means the Texas Department of Labor and Standards.

(5) "Commissioner" means the commissioner of the Texas Department of Labor and Standards.

(6) "Modular component" means a structural portion of any dwelling or building that is constructed at a location other than the homesite in such a manner that its construction cannot be adequately inspected for code compliance at a homesite without damage or without removal of a part thereof and reconstruction.

Sec. 2. BUILDING CODES. (a) Industrialized housing and industrialized buildings must be constructed to meet or exceed the requirements and standards of the National Electrical Code as published by the National Fire Protection Association and as it existed on January 1, 1985, and the requirements and standards of whichever of the following two groups of codes is used by the municipality in which the housing or building is erected or installed:

(1) the Uniform Building Code, Uniform Plumbing Code, and Uniform Mechanical Code, as published by the International Conference of Building Officials and as those codes existed on January 1, 1985; or

(2) the Standard Building Code, Standard Mechanical Code, Standard Plumbing Code, and Standard Gas Code, as published by the Southern Building Code Congress International, Inc., and as those codes existed on January 1, 1985.

(b) If the industrialized housing or building is erected or installed outside a municipality or if the municipality in which the industrialized housing or building is erected or installed does not use either of the two groups of codes listed by Subsection (a) of this section, the housing or building must be constructed to meet or exceed the requirements and standards of whichever of those two groups the manufacturer shall choose.

(c) If a code identified by Subsection (a) of this section is revised after January 1, 1985, the requirements and the standards of the revised code are to be used in place of the January 1, 1985, edition if the council determines that the revision is in the public interest and consistent with the purposes of this article.

(d) All areas of authority belonging to municipalities are specifically and entirely reserved to them. That authority may include local land use and zoning requirements, building setback requirements, side and rear yard requirements, site planning and development and property line requirements, subdivision control, and landscape architectural requirements. Those local requirements and regulations and others not in conflict with this article or other state law relating to transportation, erection, or installation, or use, shall be reasonably and uniformly applied and

enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site. A municipality that regulates on-site construction or installation specifically has authority to:

(1) require and review, for compliance with the mandatory state codes, a complete set of design plans and specifications bearing the stamp of the council for each installation within its corporate limits;

(2) require that all applicable local permits and licenses be obtained before any construction begins on a building site;

(3) require that all modules or modular components bear an approved decal or insignia under rules of the department reflecting that they have been inspected at the manufacturing plant or facility; and

(4) establish procedures for the inspection of the erection and installation of any industrialized housing or buildings to be located within its corporate limits to assure compliance with the mandatory codes and the rules of the department and for the inspection of all foundation and other on-site construction to assure compliance with approved designs, plans, and specifications; these procedures may require final inspections and tests before occupancy in accordance with the mandatory codes and may require correction of deficiencies identified by the tests or discovered in final inspections.

(e) A municipality, or other local political subdivision, may not require or enforce any amendments to the model codes set forth in Subsection (a) of this section as a prerequisite for granting or approving any local building or construction permits or certificates of occupancy.

Sec. 3. DESIGN APPROVAL. The department or approved design review agency shall review all designs, plans, and specifications of industrialized housing or buildings in accordance with the interpretations and instructions of the council to assure compliance with the mandatory state codes and shall cause the stamp of approval of the council to be placed on all pages of the designs, plans, and specifications that meet or exceed the code standards and requirements.

Sec. 4. BUILDING INSPECTIONS. (a) The department shall inspect the construction of industrialized housing or buildings at the manufacturing plant or facility to assure compliance with the approved designs, plans, and specifications. Instead of using its own personnel for in-plant inspections, the department may designate third-party inspectors approved by the council to perform these inspections subject to rules of the department. Local building officials shall be permitted to witness in-plant inspections in order to make recommendations for inspection procedures to the council.

(b) The construction of the foundation system and the erection and installation of the modules or modular components on the permanent foundation to assure compliance with the designs, plans, and specifications for industrialized housing or buildings to be sited within the corporate limits of a city shall be inspected by the city building official along with all construction done at the permanent site location. If the industrialized housing or building is to be located outside the corporate limits of any city, the on-site inspections shall be performed by third-party inspectors approved by the council or by the department.

Sec. 5. COUNCIL CREATED. (a) To assure that the designs, plans, and specifications of industrialized housing and buildings meet the mandatory state codes, the Texas Industrialized Building Code Council is created. The council is composed of 12 persons as follows:

(1) three members must represent the industrialized housing and building industries;

(2) three members must represent municipal building officials from cities with a population of more than 25,000, according to the most recent federal census;

(3) three members must represent general contractors who are builders of housing or buildings constructed on-site;

(4) one member must be a professional structural engineer registered or licensed in this state;

(5) one member must be a professional electrical engineer registered or licensed in this state; and

(6) one member must be a professional architect registered or licensed in this state.

(b) An engineer or architect member of the council may not:

(1) be designated as, be employed by, or have any ownership in, an entity that is a third-party inspector or design review agency;

(2) have an ownership interest in a business that manufactures or builds industrialized housing or buildings;

(3) be employed by or be a paid consultant to a manufacturer or builder of industrialized housing or buildings in a capacity that relates to any matter subject to review by the council; or

(4) be an officer, employee, or paid consultant of a trade association that represents the industrialized housing or building industry.

(c) The members of the council shall be appointed by the governor. Members are appointed for staggered terms of two years. Six members' terms expire on February 1 of each even-numbered year, and six members' terms expire on February 1 of each odd-numbered year. The council annually shall elect one of its members as presiding officer of the council. The vote of at least seven members present at any meeting or the written approval of at least seven members is required for the council to take any action or make any decision.

(d) The council is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished on September 1, 1989.

(e) The commissioner shall act as secretary of the council and shall provide personnel from the department necessary to perform staff functions for the council.

(f) The department shall recommend qualified third-party inspectors and design review agencies to the council. The council shall establish criteria for the approval of, and it must approve, all third-party inspectors and design review agencies. The department shall publish a listing of all approved inspectors and design review agencies.

(g) The department or approved design review agency shall review all designs, plans, and specifications of industrialized housing or buildings to assure compliance with the mandatory construction codes in accordance with the interpretations and instructions of the council.

(h) All questions raised by a municipality pursuant to review of design plans and specifications of industrialized housing or buildings, as provided in Section 2(d) of this article shall be determined by the council.

(i) Upon petition by a local building official and after a hearing, the council may require any reasonable amendment to the Uniform Building Code group or the Standard Building Code group as it may determine to be essential for the health and safety of the public. Any amendment shall be applied uniformly on a statewide basis.

(j) All questions concerning code equivalency or alternate materials or methods of construction, from an engineering performance standpoint, to the standards and requirements of the mandatory construction codes shall be determined by the council.

(k) All sheets and pages of the designs, plans, and specifications that meet or exceed the code standards and requirements under the interpretations and instructions of the council and are approved by the department or design review agency must bear the stamp of approval of the council.

(l) The council may issue instructions for the establishment of procedures for the inspection of the construction and installation of industrialized housing or buildings to assure compliance with the approved designs, plans, and specifications.

(m) The department shall adopt rules as may be necessary to implement the actions and decisions of the council. The decisions, actions, and interpretations of the council are binding on the department, third-party inspectors, design review agencies, and municipalities and other local political subdivisions.

(n) Members of the council may be reimbursed for actual costs of travel to attend meetings but may not receive any per diem allowance for food or lodging. The travel costs shall be paid out of fees collected by the department pursuant to Section 7 of this article.

Sec. 6. DEPARTMENT RULES. The department shall adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement. The rules and regulations may provide for registration and regulation of manufacturers or builders of industrialized housing or buildings and for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory codes. The department must adopt rules as appropriate to implement actions, decisions, interpretations, and instructions of the council.

Sec. 7. FEES. (a) The department shall set fees for registration of manufacturers or builders constructing industrialized housing or buildings, for the inspection of industrialized housing or buildings at the manufacturing plant or facility, and for the issuance of decals or insignia in amounts that pay for all costs of the inspections and administration of this article. These fees shall be paid to the state treasurer and placed in the general revenue fund.

(b) If an approved third-party inspector does inspections, fees may be paid directly to the third-party inspector but must be forwarded through the department for approval.

(c) For industrialized housing or buildings to be located within the corporate limits of a city, the building and permit fees charged by the city for each applicable inspection may not be greater than the fee charged for the equivalent inspection for a building constructed on-site.

Sec. 8. PENALTIES. (a) No person shall construct, sell or offer to sell, lease or offer to lease, or transport over the roads, streets, or highways of this state any industrialized housing or buildings, or modular sections or components thereof, in violation of this article or the rules, regulations, or administrative orders of the department.

(b) Any person who violates any provision of this article or of the rules, regulations, or administrative orders of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper.

(c) Whenever it appears that any person has violated, or is about to violate, any of the provisions of this article or of the rules, regulations, or administrative orders of the department, the attorney general may cause a civil suit to be instituted either for appropriate injunctive relief or for the assessment and recovery of the civil penalty or for both. Civil suits filed pursuant to this section shall be filed in a district court in Travis County, Texas.

(d) A person who knowingly and wilfully violates any provision of this article or of any published rule, regulation, or administrative order of the department commits a Class A misdemeanor.

(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

Sec. 9. **ADMINISTRATIVE SANCTIONS.** The commissioner, after notice and hearing, may refuse to issue or may permanently revoke, or suspend for a definite period of time and for a specified geographic area or location, any certificate of registration if the commissioner finds that the applicant or registrant:

(1) furnished false information on any application, report, or other document filed with the department;

(2) failed to pay any fee or to furnish or file any reports required by the department for the administration and enforcement of this article;

(3) engaged in any false, misleading, or deceptive acts or practices as those terms are set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code; or

(4) violated any provision of this article or any rule, regulation, or administrative order made or issued by the department pursuant to this article or any decisions, actions, or interpretations of the council.

Sec. 10. **EFFECTIVE DATE.** This article is effective September 1, 1985. However, modular homes shall continue to be regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) until January 1, 1986.

SECTION 6. In appointing the initial members of the Texas Industrialized Building Code Council, the governor shall designate six persons for terms expiring February 1, 1986, and six persons for terms expiring February 1, 1987.

SECTION 7. This Act does not affect the validity of any deed restriction that is otherwise valid.

SECTION 8. Sections 2, 3, and 4 of this Act are effective January 1, 1986; all other provisions take effect September 1, 1985.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 10, 1985, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1218 on April 25, 1985, by a non-record vote; passed by the Senate, with amendments, on April 25, 1985, by a viva-voce vote.

Approved: May 8, 1985

Effective: August 1, 1985, except for Sections 2-4, which are effective January 1, 1986.