

CHAPTER 274

H.B. No. 563

AN ACT

relating to the regulation and taxation of manufactured housing and to manufactured housing credit transactions.

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

SECTION 1. Section 6, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (h) and (j) to read as follows:

(h) It is unlawful for a person to sell, convey, or otherwise transfer to a consumer in this state a salvaged manufactured home as such term is defined in Section 8 of this article. A

salvaged manufactured home may only be sold to a registered retailer or registered rebuilder.

(j) It is unlawful for a retailer or broker to fail to comply with the requirements and provisions of the Texas Credit Code or the federal Truth-in-Lending Act or to advertise any interest rate or finance charge which is not expressed as an annual percentage rate. *A violation of this subsection does not create a cause of action nor claim for damages by any consumer. The consumer shall not recover more than the penalties set forth in the Texas Credit Code and federal Truth-in-Lending Act.*

SECTION 2. Section 7, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsection (o) to read as follows:

(o) A person may not alter, repair, or otherwise rebuild a salvaged manufactured home, as such term is defined in Section 8 of this article, unless the person is duly registered with the commissioner as a manufactured home rebuilder *or retailer* and unless the person complies with the rules and regulations of the commissioner relating to the rebuilding of salvaged manufactured homes.

SECTION 3. Section 13, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (f) and (i), and by adding Subsection (k) to read as follows:

(a) The commissioner may not issue a certificate of registration, unless the applicant first files a surety bond or posts other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process, *which service is made pursuant to Subsection (k) of this section.*

(f) The bond or other security shall not be liable for any judgment, or part thereof, resulting from *pain and suffering, mental anguish, emotional distress, or any other tort claims[,]* except as are recoverable in a deceptive trade practice action pursuant to Chapter 17, Subchapter E, Business & Commerce Code, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal, the surety, or the principal and surety jointly and severally for such damages, restitution, or expenses, provided, however, that in no event shall a surety or the other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of *the* face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(i) A manufacturer shall be bonded or post other security in the amount of \$100,000. A retailer shall be bonded or post other security in the amount of \$30,000. A broker shall be bonded or post other security in the amount of \$20,000. An installer shall be bonded or post other security in the amount of \$10,000. *A rebuilder shall be bonded or post other security in the amount of \$30,000.* In order to assure the availability of prompt and satisfactory warranty service, a manufacturer, which does not have a registered manufacturing plant or other facility in this state from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of \$100,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer. A new bond shall not be required for any change of ownership of a *corporation [person]* registered with the commissioner nor for any change of a location; however, a proper endorsement of the original bond may be required by the commissioner.

(k)(1) *The commissioner may not be served as a registrant's agent for service of legal process unless the service is accompanied by the affidavit of a person legally authorized to serve civil process that service on the registrant has been attempted but has not been possible. The affidavit shall set forth the facts relating to the attempted, but unsuccessful, service.*

(2) *When served with process as the agent of a registrant, the commissioner shall mail a copy of the affidavit, citation, and petition by certified mail, return receipt requested, to the*

physical location and the mailing addresses of the registrant and, if applicable, to the registrant's corporate mailing address.

SECTION 4. Section 13A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsections (g), (h) and (i) to read as follows:

(g) Within 20 days following receipt of service of the application and verified claim, the commission may enter an appearance on its behalf, file a response, appear at the hearing, cross-examine witnesses, or take whatever other action it deems appropriate that could have been taken in the original action on behalf of, and in the name of, the registrant or surety; in taking such action the commission shall act only to protect the fund from spurious or unjust claims and to assure compliance with the requirements for recovery under this section. *If the unsatisfied final judgment on which the consumer's claim is based is a default judgment, the commission is entitled to a trial de novo for a determination of the actual damages, attorney's fees, costs, and expenses for which the fund is liable.*

(h) The court shall set a hearing on the application at the earliest possible time following 30 days from the date on which the commission was served. Not less than 10 days' notice shall be given the applicant and the commission. The court shall determine from the verified complaint or oral testimony at the hearing the amount of actual damage which is recoverable by the consumer pursuant to the provisions and limitations of Section 13 of this article, and the amount of reasonable attorney's fees, costs, and expenses which the consumer incurred in the litigation which resulted in the judgment or incurred in preparing and prosecuting the litigation which was stayed or discharged by the bankruptcy court and for legal services, costs, and expenses in recovering from the fund. The court shall enter its order specifically setting forth the actual damages and attorney's fees, costs, and expenses which the commission shall pay to the consumer. Under no circumstances shall the order include any punitive, exemplary, or double or treble damages nor damages for pain and suffering, *mental anguish, emotional distress*, or any other tort claims which are not recoverable against a surety as set forth in Section 13 of this article.

(i) Within 30 days following receipt of the order of the court, the commission shall pay to the consumer a sum equal to the amount of actual damages and attorney's fees, costs, and expenses awarded by the court in its order; however, under no circumstances shall any consumer be paid *more than \$30,000 in actual damages or [in] an amount in excess of \$15,000 for attorney's fees, costs, and expenses [in] per home.* Prior to payment, the consumer shall execute an assignment to the commission of all of the consumer's right, title, and interest in and to the unsatisfied judgment and the judgment lien or the claim against the registrant and surety.

SECTION 5. Section 18, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) to read as follows:

(b) ~~[A violation of any of the provisions of this article is a deceptive trade practice in addition to those set forth in Section 17.50, Business & Commerce Code.]~~ The provisions of all laws, parts of laws, ordinances, rules or regulations which are in conflict with any of the provisions of this article are superceded and preempted to the extent of such conflict. The proper giving of the warranties and notices by the seller as required by the provisions of Section 8 and Section 14 of this article is a valid disclaimer of any implied warranties of fitness for a particular purpose or of merchantability as described in Chapter 2, Business & Commerce Code. *The failure to give the warranties and notices required by the provisions of Section 8 and Section 14 of this article is a deceptive trade practice in addition to those set forth in Section 17.50, Business & Commerce Code.*

SECTION 6. Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subdivision (c)(2) and Subsections (h) and (m) to read as follows:

(2) The commissioner may not refuse to issue a document of title, and may not suspend or revoke a document of title, unless:

(A) the application contains any false or fraudulent statement, or the applicant has failed to furnish information required by the commissioner, or the applicant is not lawfully entitled to the issuance of a document of title;

(B) the commissioner has reasonable basis to believe that the manufactured home has been stolen or unlawfully converted, or the issuance of a document of title would constitute a fraud against the rightful owner or a lienholder;

(C) the commissioner has reasonable basis to believe that the manufactured home is "salvaged" as defined in Section 8 of this article and a salvage title has not been applied for;

(D) the required fee has not been paid;

(E) *the state sales and use tax has not been paid in accordance with the provisions of Chapter 158, Tax Code, and its subsequent amendments, and [a state tax lien has been recorded as filed by the comptroller pursuant to]* Subsection (h) of this section; or

(F) a local tax lien has been filed and recorded pursuant to Section 32.015, Property Tax Code.

(h) The commissioner shall *not issue titles to new* ~~record all state tax liens as filed by the comptroller on~~ manufactured homes installed for use and occupancy in this state *unless the state sales and use tax has been paid. Proof of payment may be shown in any manner as may be prescribed at the discretion of the department* ~~[The commissioner may not issue or transfer the title to a manufactured home on which a state tax lien has been filed until the tax, penalties, and interest are paid. On receipt of a notice that the comptroller has filed a lien, the commissioner shall notify the owner and all lienholders].~~

(m) The commissioner shall furnish each county tax assessor-collector in this state a quarterly report that lists the name of the owner of each manufactured home installed in the county during the preceding calendar quarter, the name of the manufacturer, the model designation, the identification number of each section or module, and the address or location where the manufactured home is installed. *The report shall include the same information for all manufactured homes previously installed in the county for which a transfer of ownership was recorded by the issuance of a document of title during the quarter.* The commissioner shall furnish a copy of the report to the chief appraiser of the appraisal district established for the county in which the manufactured home is installed.

SECTION 7. Section (5) and Subsection (7)(c), Article 6A.05, Title 79, Revised Statutes (Article 5069-6A.05, Vernon's Texas Civil Statutes), are amended to read as follows:

(5) The creditor may collect, on each installment in default for a period of more than 15 days, a delinquency charge that may not exceed an amount equal to five percent of each installment or \$20, whichever is less. Only one delinquency charge may be collected on any installment, regardless of the period for which it remains in default. The creditor shall disclose in the credit document the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments. The charge or collection of a delinquency charge does not affect the right of a creditor to accelerate the debt under Section 10 of this chapter. Notwithstanding any provision of Chapter 8 of this title to the contrary, any creditor that contracts for, charges, or receives any charge which is other than interest or time price differential, including but not limited to any late fee, default charge, or delinquency charge in relation to a credit transaction under this chapter and which is greater than that authorized by this chapter shall be liable to the consumer for those penalty provisions of Article 8.01(b) of this title ~~[with a penalty not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorney fees fixed by the court].~~

(c) If the creditor fails to order or fails to hold the manufactured home in inventory in accordance with the deposit agreement, or retains a deposit in excess of that authorized by this section, the creditor *shall be liable for those penalty provisions of Article 8.01(b) of this title* ~~[forfeits the deposit and in addition shall pay three times the amount of the deposit].~~

SECTION 8. Article 6A.06, Title 79, Revised Statutes (Article 5069-6A.06, Vernon's Texas Civil Statutes), is amended as follows:

Art. 6A.06. PREPAYMENT. Notwithstanding the provisions of any credit transaction to the contrary, a consumer may prepay the debt in full at any time before maturity. On prepayment, after the deduction of an acquisition charge not exceeding \$50, the consumer is entitled to a refund credit of the time price differential, or interest in the case of loans, calculated on an actuarial basis in accordance with Federal Home Loan Bank Board

regulations promulgated pursuant to the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, for the prepayment of mortgage loans that are secured by first liens on residential manufactured homes. In making the calculation, the creditor may assume that the payments have been made as originally scheduled and ignore any differences created by late or early payments. Notwithstanding any provision of Chapter 8 of this title to the contrary, any creditor that responds to a consumer's request for a pay-off quotation under this chapter by delivering to the consumer a written statement indicating that the consumer owes a total amount on the credit transaction greater than that allowed by this chapter shall be liable to the consumer for those penalty provisions of Article 8.01(b) of this title [~~with a penalty not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorney fees fixed by the court~~]. The creditor shall not be liable for any oral statement of any amounts owed in regard to a transaction or for any written statement not solicited by a debtor of amounts owing in regard to a transaction unless such statements are made in conjunction with an affirmative demand by a creditor that the consumer pay amounts in excess of that authorized by this subtitle or are contained in a solicitation to renew or refinance existing debt.

SECTION 9. Section (3), Article 6A.08, Title 79, Revised Statutes (Article 5069-6A.08, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) If the consumer fails to obtain the required insurance at any time, the creditor may treat the failure as an event of default or may purchase the required insurance and add the premium of the insurance, together with interest, at the contract rate of interest or time price differential or last adjusted rate to the credit transaction; *this forced placed insurance may be in an amount up to, but not in excess of, the prepayment amount due the consumer calculated pursuant to Article 6A.06 of this chapter as of the time the insurance is purchased.* In addition, the consumer may agree to purchase any insurance allowed by this chapter after the date of the credit document and include the amount of the premium for the insurance in the unpaid balance. The additional insurance premium bears interest at a rate not in excess of the contract rate of interest or time price differential or last adjusted rate. The additional premium and interest may be paid in any period and any number of installments agreed to by the parties. In the case of forced *placed* [~~place~~] insurance, the creditor shall notify the consumer that the insurance has been forced placed and that the premium for the insurance and interest on the premium have been added to the debt. The creditor may require the consumer to pay the premium and interest in any period and in the number of installment as the creditor elects, including but not limited to a lump-sum payment on the date of the last installment, equal increments added to each of the remaining installments, or a lesser number of installments or unequal increments. In addition, the consumer and creditor may agree that the purchase of any additional insurance will be handled in accordance with an insurance premium financing agreement made under the Insurance Code and will be treated separately from the transaction.

SECTION 10. Article 6A.16, Title 79, Revised Statutes (Article 5069-6A.16, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6A.16. CONSUMER CREDIT COMMISSIONER AND REGISTRATION.

(a) The Consumer Credit Commissioner of Texas has the same powers and authority to enforce this chapter as those provided by Chapter 2 of this title. However, the commissioner may not require by rule or regulation the inclusion of any specific language or disclosures on any manufactured home credit document which are not expressly required by the provisions of this chapter or the regulations of the Federal Home Loan Bank Board.

(b)(1) *Each creditor governed by this chapter who is not a credit union or an authorized lender under Chapter 3 of this title shall register with the Office of Consumer Credit Commissioner. Each creditor shall pay an annual fee of \$15 for each location at which credit transactions subject to this chapter are originated, serviced, or collected. The commissioner by rule may establish procedures to facilitate the registration and collection of fees, including rules staggering the due dates of the fees throughout the year. If a creditor fails to renew the creditor's registration, the commissioner shall, not later than 30 days after the expiration of the registration, notify the creditor of the expiration, and of the procedures applicable to renewal. A registration renewal is timely if filed with the commissioner,*

together with the annual registration fee, not later than 30 days after receipt of notice of expiration. A creditor who fails to renew timely as required by this section is subject to the penalties set forth in Section (2) of this Article.

(2) The commissioner may impose a penalty not to exceed \$50 for failure to register as required by this Article. The commissioner may impose a penalty not to exceed \$250 for failure of the creditor to renew the creditor's existing registration and submit the appropriate fee as required by this Article. The penalties provided by this section are the sole and exclusive penalties for a violation of this Article. The fact that a creditor was not registered as required by this Article at the time of execution of a contract does not render invalid or unenforceable a contract otherwise valid and enforceable and does not subject an unregistered creditor to liability to the state or to any person under Article 8.01 of this Subtitle or any other provision of this Subtitle or other law or at common law, other than that liability established by this subsection.

SECTION 11. Article 6A.18, Title 79, Revised Statutes (Article 5069-6A.18, Vernon's Texas Civil Statutes), as enacted by Acts 1987, 70th Legislature, Chapter 838, Section 11, is repealed.

SECTION 12. Section 11.432, Tax Code, is amended by amending Subsection (a) to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of a document of title to the manufactured home issued by the *Texas Department of Licensing and Regulation* (~~commissioner of licensing and regulation~~) under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), showing that the individual applying for the exemption is the owner of the manufactured home or be accompanied by a verified copy of the purchase contract showing that the applicant is the purchaser of the manufactured home.

SECTION 13. Section 25.03, Tax Code, is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) Property shall be described in the appraisal records with sufficient certainty to identify it. The description of a manufactured home shall include the correct identification or serial number of the home or the Department of Housing and Urban Development label number or the state seal number *in addition to the information required in Subsection (c) of this Section. A manufactured home shall not be included in the appraisal records unless this identification and descriptive information is included.*

(c) *Each description of a manufactured home shall include the approximate square footage, the approximate age, the general physical condition, and any characteristics which distinguish the particular manufactured home.*

SECTION 14. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on March 31, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 563 on May 18, 1993, by a non-record vote; passed by the Senate, with amendments, on May 13, 1993: Yeas 30, Nays 0.

Approved May 24, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.