

## CHAPTER 1134

## H.B. No. 855

## AN ACT

relating to the regulation of manufactured housing, to the regulation of persons engaged in the manufactured housing business, to the attachment of tax liens on manufactured housing, and to the protection of consumers of manufactured housing.

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

SECTION 1. Section 4A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4A. MUNICIPALITIES. (a) An incorporated city may prohibit the installation of a mobile home for use or occupancy as a residential dwelling within its corporate limits. Any such prohibition must be prospective and shall not apply to a mobile home previously legally permitted and used or occupied as a residential dwelling within the city. Permits for such use and occupancy must be granted by an incorporated city for the replacement of a mobile home within its corporate limits with a HUD-Code manufactured home.

(b) Upon application the installation of HUD-Code manufactured homes shall be permitted as residential dwellings in *appropriate* [those] areas [~~determined appropriate by the city~~], including subdivisions, planned unit developments, single lots, and rental communities and parks. *An application to install a new HUD-Code manufactured home for use and occupancy as a residential dwelling is deemed approved and granted unless the city denies the application in writing within 30 days from receipt of the application setting forth specifically the findings of the city as to why such installation would adversely affect the public health, safety, or welfare.*

(c) *A manufactured home rental community or park is not a subdivision for purposes of regulation in this state. A "manufactured home rental community or park" is defined as and means a plot or tract of land which is separated into two or more spaces or lots which are rented or leased or offered for rent or lease to persons for the installation of manufactured homes for use and occupancy as residences; provided, that the lease or rental agreement is for a term of less than 60 months and contains no purchase option. This subsection shall not be applicable to, nor affect the final judgment in, any lawsuit which was filed and was pending final judgment prior to May 1, 1987.*

(d) This section shall not affect the validity of any deed restriction that is otherwise valid.

SECTION 2. Section 6, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. REGULATIONS. (a) It is unlawful for any manufacturer to construct HUD-code manufactured homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all HUD-code manufactured homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development. It is unlawful for a manufacturer to ship HUD-code manufactured homes into the state for sale or resale unless the manufacturer has complied with all requirements of the National Manufactured Home Construction and Safety Standards Act of 1974 and all standards, rules, and regulations of the Department of Housing and Urban Development.

(c) Before the sale of a *new* manufactured home to a consumer and before its installation, it is unlawful for any manufacturer, retailer, broker, or installer to make any alteration on a *new* manufactured home to which a [seal,] label[, or decal] has been affixed or cause such an alteration to be made, unless prior written approval has been obtained from the department. *It is unlawful for any manufacturer, retailer, broker, installer, or lienholder to make any alteration, repair, or replacement of any*

*component or systems in and to a used manufactured home which will result in making the home not habitable.*

(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a consumer in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal ~~or~~[,] label~~—or decal~~.

(e) 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 registered retailer.

(f) A person may not ~~[sell, exchange, or lease-purchase any manufactured home to a consumer in the state for use as a dwelling or residence, unless the manufactured home is habitable.~~

~~[(g) A person may not]~~ make any announcement concerning the sale, exchange, or lease-purchase of, nor offer to sell, exchange, or lease-purchase, a manufactured home to consumers in this state through any form of advertising unless such person is a duly registered manufacturer, retailer, or broker. This prohibition against advertising shall not apply to a person to whom a certificate or document of title has been issued showing such person to be the owner of the home, provided that such person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in any consecutive 12-month period. This prohibition also shall not apply to the advertising of real estate on which a manufactured home has been permanently attached and affixed.

(g) ~~[(h)]~~ It is unlawful for a retailer to purchase for resale to a consumer, or to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase, any new HUD-code manufactured home which was ~~[not]~~ constructed by a ~~[registered]~~ manufacturer *which was not registered with the department at the time of construction.*

(h) ~~[(i)]~~ 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 ~~[any manufacturer, retailer, or installer to purchase, use, or possess any recycled tires, wheels, and axles for manufactured homes except those acquired from a person registered with the department as an approved recycler].~~

(i) ~~[(j)]~~ It is unlawful for a retailer or broker to use the phrase “no down payment” or “nothing down,” or any similar phrase or term in any advertisement, without identifying in the advertisement the specific source of the funds for the loan or credit advance and setting forth the conditions of qualification of the purchaser for approval of the loan or credit advance without down payment. This prohibition shall not apply to credit transactions to be guaranteed by the Veterans Administration of the United States provided that the phrase or term includes the words “to qualified veterans.”

(j) ~~[(k)]~~ 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.

(k) ~~[(l)]~~ It is unlawful for a retailer to set forth in any retail installment sales contract or other credit document any down payment unless all of the down payment has actually been received by the retailer at the time of execution of the contract or document. If any part of the down payment is represented by a loan, trade-in, or any consideration other than cash, this fact shall be expressly set forth on the retail installment sales contract or credit document. No amount of the cash down payment shall be from any rebate or other consideration received by, or to be given to, the consumer from the retailer *or the manufacturer.*

SECTION 3. Section 7, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REGISTRATION. (a) A person may not construct or assemble a *new HUD-code* manufactured home in the state or ship a *new HUD-code* manufactured home into the state, unless the person is registered as a manufactured housing manufacturer by the department and possesses a valid manufacturer's certificate of registration *at the time the home is constructed or assembled.*

(b) *Except as otherwise expressly provided in this article, a [A] person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's certificate of registration.*

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's certificate of registration.

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration and files proof of insurance as required by the department. The department may issue a temporary installer's certificate of registration to a homeowner for the installation of the owner's home in accordance with applicable requirements, standards, and regulations of the department, on application and payment of the required fee and on submission of proof of insurance by the owner as required by the department.

(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the department an application for registration containing the following information:

- (1) the legal name, address, and telephone number of the applicant;
- (2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and
- (3) the dates on which the applicant became the owner and operator of the business.

(f) Each application for a certificate of registration must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

(g) All certificates of registration are valid for one year from the date of issue and are renewable annually on payment of the annual fee; ~~provided, however, that the initial certificates of registration issued to registrants as of September 1, 1979, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.~~

(h) The department by rule may adopt a system under which the *registrations* [~~licenses~~] issued under this article expire on various dates during the year. For the year in which the expiration date is changed, *registration* [~~license~~] fees payable on the date of issuance shall be prorated on a monthly basis so that each *registrant* [~~licensee~~] shall pay only that portion of the *registration* [~~license~~] fee that is applicable to the number of months during which the *registration* [~~license~~] is valid. On renewal of the *registration* [~~license~~] on the new expiration date, the total *registration* [~~license~~] fee is payable.

(i) If a change occurs in the information filed with the department under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(j) While acting as an agent for a registrant, an employee is covered by the business entity's certificate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor except as provided in Subsection (m) of this section.

(k) 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 sales location, any certificate of registration if the commissioner finds that the applicant or registrant:

- (1) knowingly and wilfully violated any provision of this *article* [~~Act~~] or any rule or regulation made pursuant to this *article* [~~Act~~];
- (2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this article [Act] or by the Federal Trade Commission;

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

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this article [Act];

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

(8) has a record of criminal convictions which, in the opinion of the department, renders the applicant unfit for registration; ~~or~~

(9) failed to file the bond or post other security for each location as required by Section 13 of this article.

(l) The commissioner shall conduct any hearing involving the denial, revocation or suspension of a certificate of registration in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A retailer or an installer may not contract with any person for the installation of any air-conditioning equipment, devices, or components in connection with the installation of a manufactured home unless the person is registered as an installer with the department or is otherwise licensed by the state as an air-conditioning contractor. This subsection shall not apply to a new manufactured home being installed on a permanent foundation within a municipality which regulates air-conditioning contractors unless some other state statute provides otherwise.

(n) A person may not act as a salesperson of manufactured housing unless the person is registered with the department. Each applicant for a certificate of registration shall file with the department an application giving such information as the department deems necessary and pay the required fee. The owner of a sole proprietorship, a partner in a partnership, or an officer of a corporation which is duly registered as a retailer or broker does not have to register as a salesperson so long as such individual is properly listed in the retailer's or broker's application for registration. The salesperson is the agent of the retailer or broker, ~~and the department may require the execution of an appropriate agency designation~~. The registration shall be an annual registration. A retailer or broker shall not employ, retain, or otherwise use the services of a salesperson who is not registered. A registered salesperson may work or sell for one or more retailers, brokers, or sales locations.

(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 department as a manufactured home rebuilder and unless the person complies with the rules and regulations of the department relating to the rebuilding of salvaged manufactured homes ~~[acquire or purchase, or sell or offer to sell, any recycled tires, wheels, or axles for manufactured homes unless the person is duly registered with the department. Each applicant for a certificate of registration shall file with the department an application giving the information as the department deems necessary and pay the required fee]~~.

(p) Any person not registered with the [The] department as of September 1, 1987, must attend and complete twenty (20) ~~[require at least forty (40)]~~ hours of instruction in the law and consumer protection regulations prior to any ~~[for each person applying for]~~ registration ~~[as a retailer]~~. The instruction shall be given not less than one time each ~~[calendar]~~ quarter ~~[in Austin]~~. No test shall be made a prerequisite of registration, but actual attendance at the instruction sessions is required. The department shall not issue a registration until the instruction is completed ~~[may require instruction for other categories of registrants as may be necessary for the protection of the public health, safety, and welfare]~~. This subsection does not apply to a registrant making application

to register additional business locations [~~any person registered in any category on September 1, 1985~~].

(q) Notwithstanding any provision of this section to the contrary, a bank, savings and loan association, or credit union domiciled in this state is not required to be registered as a retailer to sell, exchange, or lease-purchase up to three repossessed manufactured homes to consumers in any consecutive 12-month period; provided, that such bank, savings and loan association, or credit union is the lienholder of record on a document of title issued by the department at the time of repossession.

SECTION 4. Section 8, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. USED [MOBILE] HOMES. (a) A person [~~retailer or broker~~] may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used *manufactured* [mobile] home [~~manufactured after December 12, 1969,~~] to a consumer unless the [an] appropriate seal or label is affixed to it. If the used *manufactured* [mobile] home does not have a seal or label, the person [~~retailer or broker~~] must apply to the department for a seal and pay the fee [~~with an affidavit that the manufactured home is habitable~~].

(b) It is unlawful for a person to sell, exchange, or lease-purchase any used *manufactured* home to a consumer for use as a dwelling or residence unless the *manufactured* home is habitable. If the sale, exchange, or lease-purchase is to a purchaser for the purchaser's business use, the *manufactured* home need not be habitable; however, the title to the home shall be surrendered to the department for cancellation by the seller.

(c) For purposes of all provisions of this article or other laws of this state the term "habitable" as applied to *manufactured* housing is limited to and means that there is no defect, damage, or deterioration to the home which creates a dangerous or unsafe situation or condition; that the plumbing, heating, and electrical systems are in safe working order; that the walls, floor, and roof are free from any substantial openings not designed and are structurally sound; and that all exterior doors and windows are in place.

(d) It is unlawful for a person to sell, exchange, or lease-purchase a used *manufactured* home to any person without the appropriate transfer of good and marketable title to the home except when the sale, exchange, or lease-purchase is (1) to a purchaser for the purchaser's business use, or (2) to a rebuilder for the purpose of rebuilding a salvaged *manufactured* home.

(e) The purchaser of a used *manufactured* home for business use shall not sell, exchange, or lease-purchase the home for use as a dwelling or residence unless a new title to the used *manufactured* home is issued by the department. The purchaser may apply to the department for the issuance of a new title. The department shall then inspect the home, and if it is determined that the home is habitable, issue a new title.

(f) A holder of a lien recorded on a *manufactured* home document of title issued by the department who sells, exchanges, or transfers by a lease-purchase a repossessed *manufactured* home covered by such document of title is not required to comply with the provisions of this article, provided that the sale, exchange, or transfer by a lease-purchase is (1) to or through a registered retailer, or (2) to a purchaser for the purchaser's business use. If the sale, exchange, or lease-purchase is to a purchaser for the purchaser's business use, the holder of the lien shall surrender the title to the department for cancellation. If the sale, exchange, or lease-purchase is to or through a registered retailer, the retailer is responsible and liable for compliance with the provisions of this article and all rules and regulations of the department, and the holder of the lien shall not be joined as a party in any litigation arising in connection with, or relating to, the sale, exchange, or lease-purchase of the repossessed *manufactured* home.

(g)(1) A "salvaged" *manufactured* home, for purposes of all provisions of this article, is defined as and means a *manufactured* home obtained by a property and casualty insurer from the insured by reason of the insurer's payment of the policy

value written on the home to the insured; the reasonableness of the insurer's judgment that the costs of repair to the home would exceed the insured value of the home does not affect the status of the home as salvage.

(2) The person possessing the original document of title to a salvaged manufactured home must surrender such document of title to the department for cancellation of the title and issuance of a salvage title. If the manufactured home is rebuilt in accordance with the provisions of this article and the rules and regulations of the department, the department shall issue, upon proper application, a new original document of title in lieu of the salvage title.

SECTION 5. Section 11, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. FEES. (a) There shall be a fee in an amount set by the commissioner for the inspection of the installation of mobile and HUD-code manufactured homes which shall be paid by the installer of the home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the home. The department shall make appropriate fee distributions to local governmental units performing inspections pursuant to contracts or other official designations *provided that the local governmental units are not collecting a local inspection fee.*

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to that Act itself, the commissioner shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of HUD-code manufactured home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all HUD-code manufactured homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

~~(4) [There shall be a fee for inspection of used mobile and HUD-code manufactured homes at retailer locations to check compliance with the code and to determine if the home has been damaged in transit. This fee shall be paid by the retailer in possession of the homes at the time the inspection was made. For any given home at a retailer location, this fee may not be assessed more than one time.]~~

[(5)] There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of HUD-code manufactured homes. This fee shall be paid by the person making the alteration. *There shall be a fee for the inspection of the rebuilding of salvaged manufactured homes which shall be paid by the rebuilder.* The person making the alteration or the rebuilder shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection. *There shall be a fee for the inspection of used manufactured homes for which the title has been cancelled to determine if the home is habitable for the issuance of a new title.*

~~(5) [(6)] There shall be a fee for the issuance of seals for used mobile or HUD-code manufactured homes [which shall be paid by the retailer or broker].~~

~~(c) The [installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home. Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee. The department shall make appropriate fee distributions to each local governmental unit performing inspections pursuant to contracts or other official designations or the department may waive the inspection fee if the installer has paid applicable inspection fees to the appropriate local government officials.]~~

~~[(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the] commissioner shall set [fees for the following functions:~~

~~[(1) a fee paid by the manufacturer for the review of modular home and modular component designs, blueprints, and specifications;~~

~~[(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;~~

~~[(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;~~

~~[(4)] annual fees for the issuance and renewal of manufacturers', retailers', brokers', salespersons', [recyclers',] and installers' certificates of registration; and fees for the issuance of rebuilder registrations~~

~~[(5) a fee for the issuance of decals that shall be paid by the manufacturer.~~

~~[(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection].~~

~~(d) A fee shall be set and charged to each person attending the course of instruction in the law and consumer protection regulations for applicants for registration.~~

~~(e) A fee shall be set and charged to the manufacturer or retailer requesting a consumer complaint inspection of the manufactured home pursuant to the provisions of Subsection (e) of Section 14 of this article.~~

(f) All fees assessed under this section [article] shall be paid to the State Treasurer and placed in the General Revenue Fund.

~~[(g) The fees charged by the department in effect August 31, 1983, shall remain in effect until the new schedule of fees set forth in this section has been promulgated and adopted.]~~

(g) ~~[(h)]~~ The commissioner shall set the fees imposed under this section in amounts that are reasonable and necessary to defray the costs of administering this article.

SECTION 6. Section 13, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. SECURITY REQUIRED. (a) The department may not issue a certificate of registration, unless the applicant first files a surety bond~~[-a cash deposit,]~~ 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.

(b) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided in this section. Other ~~[by this Act. A cash deposit or other]~~ security need not be posted annually so long as the applicable amount specified in this section remains posted. If a claim is made against the security ~~[a cash deposit]~~ causing the security ~~[deposit]~~ to be lessened, the person posting the security ~~[depositor]~~ has 20 calendar days in which to post ~~[deposit]~~ additional ~~[money or other]~~ security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is ~~[immediately]~~ suspended on the effective date of cancellation.

(c) If ~~[a cash deposit or]~~ other security is posted, the interest from the security ~~[said deposit]~~ shall go to the person posting the security ~~[depositor]~~.

(d) The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The ~~[cash deposit or]~~ other security shall be in such a form as the commissioner may deem appropriate.

(e) The bond~~[-cash deposit,]~~ or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment

against a manufacturer, retailer, broker, or installer for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action *directly related to* ~~[connected with]~~ the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including ~~[but not limited to]~~:

(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

(2) failure to give proper title documents or certificates of title to consumers;

(3) failure to give or the breach of any ~~[manufactured home]~~ warranty required by this *article* ~~[Act]~~ or by the Federal Trade Commission or the violation of any requirements of the Texas Credit Code or of the federal Truth-in-Lending Act; or

(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code.

*(e-1)* The bond or other security shall not be liable for *any judgment, or part thereof, [judgments]* resulting from *any* tort claims, except as expressly set forth *in Subsections (e)(1), (e)(2), (e)(3), and (e)(4) of this section [hereinafter]*, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the ~~[cash deposit or]~~ 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 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.

(f) A consumer shall inform the manufacturer, retailer, or installer, and the department *in writing* of any claim against the bond or security no later than two years after the purchase of the *manufactured [mobile]* home. Whenever the department receives notice of a claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a *new* manufactured home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. Property used for the business that is not contiguous to a bonded location requires a separate bond. Any location at which a manufactured home is shown to the public or at which it is offered for sale, exchange, or lease-purchase by a retailer to consumers is a location which is required to be bonded. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation which qualifies for tax exemption pursuant to Section 501(c) of the U.S. Internal Revenue Code is not a location which requires a bond.

(h) A manufacturer shall be bonded~~[, supply a cash deposit]~~ or *post* other security in the amount of \$100,000 ~~[\$500,000]~~. A retailer shall be bonded~~[, supply a cash deposit]~~ or *post* other security in the amount of \$30,000 ~~[\$100,000]~~. A broker shall be bonded~~[, supply a cash deposit]~~ or *post* other security in the amount of \$20,000 ~~[\$80,000]~~. An installer shall be bonded~~[, supply a cash deposit]~~ or *post* other security in the amount of \$10,000. *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. [ \$20,000. A person registered with the department and bonded prior to September 1, 1985, shall have until September 1, 1987, to provide the additional amount of bond, cash*



~~deposit, or other security required by this Act for each location.] 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 person registered with the department nor for any change of a location; however, a proper endorsement of the original bond may be required by the department.~~

(i) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this *section* [Act]. Any ~~cash deposit or~~ other security on file with the department shall remain on file with the department for two years after the person ceases business as a manufacturer, retailer, broker, or installer or at such *later* time as the department may determine that no claims exist against the ~~cash deposit or~~ security.

~~[(j) A consumer may assign any claim against the bond or other security to any person registered with the department who has performed services for or rendered any benefit to the consumer, and the assignee is entitled to recover against the bond or other security in accordance with the terms of the assignment. Otherwise, a consumer may not assign any claim.]~~

SECTION 7. Section 14, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. WARRANTIES. (a) *The manufacturer shall warrant that each new HUD-code manufactured home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the U.S. Department of Housing and Urban Development pursuant to the provisions of the National Manufactured Home Construction and Safety Standards Act of 1974. The manufacturer shall further warrant that the manufactured home and all appliances and equipment included in the home are free from defects in materials or workmanship* ~~[After the effective date of this Act, all new manufactured homes sold to consumers in the state shall be covered by the manufactured home warranty set forth in this section].~~

(b) *The manufacturer's [manufactured home] warranty provided for in this section must be set forth in a separate written document and is in effect for a period of at least one year from the date of initial installation of the new HUD-code manufactured home at the consumer's homesite* ~~[Act is given by the manufacturer of the manufactured home].~~

(c) *The manufacturer shall deliver the manufactured home warranty to the retailer at the time of delivery of the home to the retailer along with all warranties given by the manufacturers of all appliances or equipment installed in the home.* ~~[shall be set forth in a separate written document; shall be delivered to the consumer by the retailer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:~~

~~[(1) that the manufactured home complies with the code;~~

~~[(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later;~~

~~[(3) that the manufactured home and all appliances and other equipment installed and included therein by the manufacturer or retailer are free from defects in materials or workmanship;~~

~~[(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department;~~

~~[(5) that the manufacturer or the retailer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;~~

~~[(6) that the warranty contains the address of the retailer and manufacturer where notices of defects may be given; and~~

~~[(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.]~~

(d) The ~~[manufacturer and]~~ retailer shall give the consumer a written warranty that the installation of the new HUD-code manufactured home at the initial homesite will be completed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department and that any appliances or equipment included with the sale of the home to be installed by the retailer have been, or will be, installed in accordance with the instructions or specifications of the manufacturer of the appliance or equipment and are free from defects in materials or workmanship. The retailer's warranty is for a period of one year from the date of initial installation of the home at the consumer's homesite. The retailer shall deliver to the consumer at the time the contract of sale is signed the following:

- (1) the manufacturer's warranty;
- (2) the retailer's warranty;
- (3) the warranties for all appliances and equipment given by the manufacturers of the appliances and equipment included with, or installed in, the home; and
- (4) the name and address of the manufacturer and retailer to which the consumer is to give notice of warranty service requests. ~~[are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.]~~

(e)(1) The consumer shall notify either the retailer or the manufacturer, or both, if applicable, in writing of the need for warranty service or repairs; written notice to the department or to the office of the attorney general constitutes notice to the retailer and manufacturer. The manufacturer or retailer, or both, shall take appropriate corrective action within a reasonable period of time as required by the rules of the department to fulfill their respective written warranty obligations.

(2) If the manufacturer or retailer fails to provide warranty service within the reasonable time allowed by the rules of the department, the manufacturer or retailer must show good cause in writing why such service was not provided. Failure to show good cause constitutes sufficient basis for suspension or revocation of the registration.

(3) If the consumer is not provided proper warranty service, the consumer may, at any time, without fee, request the department to perform a consumer complaint home inspection.

(4) If the manufacturer or retailer believes the consumer's complaints are not covered by the respective warranty, believes that the warranty service was previously properly provided, or has a dispute as to the respective responsibilities pursuant to the warranties, either of them may request the department to perform a consumer complaint home inspection along with payment of the required inspection fee.

(5) After receipt of a request for a home inspection, the department will perform such inspection within 15 days. Within five days following the inspection, the department shall mail its written report and orders, if any, to the consumer, manufacturer, and retailer by certified mail, return receipt requested. The report shall detail each of the consumer's complaints, whether or not each complaint is covered by either of the warranties and which warranty. The department shall issue appropriate orders to the manufacturer or retailer for correction or repair of the defects and the time allowed, which must be reasonable, for the correction.

(6) The manufacturer and retailer shall comply with the initial report and warranty service orders of the department. Such orders are not contested cases within the meaning of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) so as to provide an opportunity for an adjudicative hearing prior to compliance. If the manufacturer or retailer, or both, fails or refuses to provide the warranty service in accordance with the orders of the department following a home inspection, the commissioner shall set a hearing at which the manufacturer or retailer, or both, shall show cause why the registration should not be suspended or revoked. If, following the hearing, the commissioner finds that the prior warranty service orders were correct, the failure or refusal of the

manufacturer or retailer to comply with the orders is sufficient cause for the suspension or revocation of the registration. If the commissioner finds that the prior warranty service orders were incorrect in the determination of the respective responsibilities of the manufacturer, retailer, or both, the commissioner shall enter a final order setting forth (1) the correct responsibilities, and (2) the right of either the manufacturer or retailer to indemnification from the other. The commissioner may also enter an order directing the manufacturer or retailer whose registration is not revoked to perform the warranty service responsibilities of the retailer or manufacturer whose registration is revoked by giving the manufacturer or retailer performing such warranty service the right of indemnity against the other. The manufacturer or retailer entitled to indemnification by virtue of an order of the commissioner pursuant to this subsection is a "consumer" for purposes of Sections 13 and 13A of this article and may recover its costs, expenses, and attorney's fees from the other party's surety, other security, or the manufactured homeowners' recovery fund ~~[For all secondary installations not covered by the new home warranty as set forth in Subsection (e) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules, regulations, and administrative orders of the department].~~

(f) If the new HUD-code manufactured home is moved from the initial installation site during the term of the warranty period, the ~~manufacturer's and retailer's warranties~~ ~~[new home warranty]~~ shall not apply to any defect or damage caused by the move. Conspicuous notice of this provision shall be given the consumer at the time of sale. The burden of proof is placed on the warrantor to establish that the defect is caused by the move.

(g) ~~For all secondary installations not covered by the retailer's warranty as set forth in Subsection (d) of this section and for the installation of all used manufactured homes, the installer shall give the manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of the department. [In any action brought against a registrant for failure to perform warranty service or repairs, the \$1,000 limitation set forth in Section 17.50(b)(1) of Subchapter E, Chapter 17, Business & Commerce Code, shall be adjusted to reflect changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 — 100, compiled by the Bureau of Labor Statistics, United States Department of Labor. The \$1,000 limitation shall be increased or decreased by multiplying the \$1,000 limitation by the percentage of increase or decrease in the Consumer Price Index from the 1967 base of 100 to the time at which damages are awarded by final judgment or settlement and adding or subtracting such resulting amount to or from the \$1,000 limitation.]~~

(h) If a manufacturer is no longer registered with the department or has filed for reorganization or discharge in bankruptcy, the commissioner shall give written notice of this fact to all registered retailers. The retailer must assume liability, and is fully responsible, for the manufacturer's warranty and all warranty service as to any new HUD-code manufactured home constructed by such manufacturer and sold to a consumer by the retailer following receipt of the commissioner's notice. A written notice, as required by the department, must be given to the consumer by the retailer prior to the execution of a binding deposit agreement or retail installment sales contract. The retailer is entitled to indemnity from the manufacturer's surety or other security, and from the manufactured homeowners' recovery fund, for all warranty service performed pursuant to the manufacturer's warranty; in this situation the retailer is a "consumer" for purposes of recovery against the surety and the fund pursuant to the provisions of Sections 13 and 13A of this article. Nothing contained in this subsection authorizes a retailer to purchase new HUD-code manufactured homes from an unregistered manufacturer in violation of Section 6(h) of this article.

SECTION 8. Subsection (d), Section 17, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this *article* [~~Act~~] or any implied warranties or the violation of any provision of this *article* [~~Act~~] by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this *article* [~~Act~~]. However, notwithstanding any provisions of law to the contrary, a lawsuit *containing allegations that the manufacturer or retailer failed to perform warranty obligations or failed [alleging failure] to comply with any written or implied warranties [the warranty provisions of this article]* shall be abated, *provided that a plea in abatement is filed with the court not more than 45 days following the answer date of the movant, if the manufacturer or retailer requests a consumer complaint inspection pursuant to the provisions of Section 14 of this article. The abatement shall continue [unless and]* until the department has performed a consumer complaint inspection and the retailer, manufacturer, or both have been given an opportunity to comply with the inspection report, *determinations, and orders [instructions]* of the department; *however, the abatement shall not be granted for a period in excess of 150 days.* A consumer's refusal to allow the manufacturer or retailer to perform warranty service pursuant to the *inspection report, determinations, or orders [rules]* of the department is a bar to any cause of action relating to *alleged [for] failure to comply with any written or implied warranties or perform warranty service.*

SECTION 9. Subsection (c), Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(c)(1) At the first retail sale, the retailer and purchaser shall apply for the issuance of a document of title. As a part of the application, the retailer shall surrender the original manufacturer's certificate. At a subsequent sale or transfer the seller and purchaser, or the transferor and transferee, shall apply for the issuance of a new document of title. As a part of the application, the seller or transferor shall surrender the original document of title.

(2) The department *may refuse to [shall review the application and]* issue a document of title, or *may suspend or revoke a document of title, if:*

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

(B) *the department 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 department 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; or*

(D) *the required fee has not been paid.*

(3) *If the department refuses to issue, or suspends or revokes, a document of title, written notice of such action must be given by certified mail to the seller and purchaser, or transferor and transferee, and to the holder of a lien or security interest of record. Such action by the department is a contested case within the meaning of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and the person having an interest in the manufactured home may appeal such action to the commissioner. Notice of the appeal and request for hearing must be filed with the commissioner within 30 days following notice of the department's action. [the department is satisfied that the document of title should be issued.]*

SECTION 10. Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended by amending Subsection (r) and by adding a new Subsection (u) to read as follows:

(r) The department shall set *fees [a fee]* for issuing *and cancelling* titles to manufactured housing *which shall include \$10 for each title transaction which shall be paid to*

the State Treasury and deposited in a fund to be known as the manufactured homeowners' recovery fund~~;~~ ~~it shall not be higher than is necessary to pay the estimated expenses of administering this section~~. These fees are hereby appropriated, and reappropriated, respectively, to the department and the manufactured homeowners' recovery fund ~~[shall be paid to the State Treasurer and placed in the general revenue fund]~~.

(u) The department shall cancel titles to manufactured homes which have been sold, exchanged, or lease-purchased to purchasers for the purchasers' business use. New titles may be issued on proper application following an inspection and determination that the home is habitable. The department shall issue salvage titles for salvaged manufactured homes, as defined in Section 8 of this article, and may issue new titles if the new home is rebuilt pursuant to the rules and regulations of the department.

SECTION 11. The Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is amended by adding Section 13A to read as follows:

Sec. 13A. MANUFACTURED HOMEOWNERS' RECOVERY FUND. (a) There is hereby established the manufactured homeowners' recovery fund ("fund"). The fund shall be administered and managed by the board of trustees composed of three members appointed by the governor as follows:

(1) the commissioner of the Texas Department of Labor and Standards or other representative of the department;

(2) the chief of the consumer protection division of the attorney general's office or other representative of the attorney general; and

(3) a representative of the manufactured housing industry in this state.

(b) The members of the board of trustees shall be appointed for terms which shall expire on February 1 of each odd-numbered calendar year. No bond or other security shall be required of the members of the board of trustees.

(c) Beginning September 1, 1987, the department shall charge and collect an additional fee of \$10 for each and every title transaction for which it charges a fee. This additional fee shall be deposited in the special fund.

(d) The sums in this fund shall be used exclusively for carrying out the purposes of this section. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System; and the interest from these investments shall be deposited to the credit of the fund. It is expressly provided, however, that no investments shall be made which will impair the necessary liquidity required to reimburse consumers as provided in this section.

(e) Subject to the limitations and requirements of Section 13 of this article and of this section, the fund shall be used to compensate consumers who have unsatisfied judgments, or in certain limited circumstances unsatisfied claims, against a manufacturer, retailer, broker, or installer registered with the department ("registrant") in one of the following situations:

(1) The consumer has obtained a final judgment which is unsatisfied against the registrant and its surety jointly and severally, or against the registrant only, if the court found that the surety was not liable due to prior payment of valid claims against the bond in an amount equal to, or greater than, the face amount of the applicable bond.

(2) The consumer has obtained a judgment against the surety of the registrant which is unsatisfied.

(3) The consumer has obtained a judgment against a registrant which has posted other security in lieu of the bond in accordance with Section 13 of this article, and such security is insufficient to satisfy the judgment.

(4) The consumer has alleged a claim against the registrant in a lawsuit which has been stayed or discharged as a result of the filing for reorganization or discharge in bankruptcy by the registrant and (1) judgment against the surety is not possible because of the bankruptcy or liquidation of the surety or because the surety has been

found by a court of competent jurisdiction not to be liable due to prior payment of valid claims against the bond in an amount equal to, or greater than, the face amount of the applicable bond; or (2) the registrant has posted other security in lieu of the bond.

(f)(1) In order to recover from the fund, the consumer must file, in the court in which the unsatisfied final judgment was entered or the district courts of Travis County, Texas, an application for an order directing payment out of the fund to which is attached a verified claim. A copy of the application and verified claim must be served on the board of trustees by serving the commissioner. The consumer must mail copies of the application and verified claim to the registrant and its surety by certified mail, return receipt requested, on the date the application is filed with the court.

(2) If the consumer has obtained a judgment which is unsatisfied against the registrant and/or its surety as set forth in Subsection (e)(1), (e)(2), or (e)(3) of this section, the verified claim shall contain the following:

(A) evidence satisfactory to the court: (1) that the judgment against the registrant and its surety has been entered, or (2) that the judgment against the registrant only contains a specific finding that the surety has no liability, and that execution has been returned nulla bona, and that a judgment lien has been perfected;

(B) the amount of actual damages broken down by category as awarded by the court or jury in the cause which resulted in the unsatisfied judgment, and the amount of attorney's fees set forth in the unsatisfied judgment;

(C) the amount of payment or other consideration received, if any, from the registrant, the surety, or other security posted with the department; and

(D) the amount that may be realized, if any, from the sale of real or personal property or other assets of the judgment debtors liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount which may be realized.

(3) If the consumer has alleged a claim as set forth in Subsection (e)(4) of this section and for the reasons set forth therein has not been able to secure a judgment, the verified claim must contain the following:

(A) a true copy of all the pleadings in the lawsuit which was stayed or discharged by the bankruptcy court;

(B) a complete list of all complaints against the registrant, setting forth the specific acts or omissions complained of which resulted in actual damage to the consumer along with the actual dollar amount necessary to reimburse or compensate the consumer for costs or expenses resulting from the acts or omissions of which the consumer complains;

(C) a true copy of any written agreement which the consumer has entered into with his or her attorney; or a statement as to the oral agreement with the attorney with reference to the payment of legal fees and costs; and

(D) true copies of all purchase agreements, warranties, notices, requests for warranty service, service or repair orders, or papers or documents of any kind whatsoever which the consumer received in connection with the purchase, exchange, or lease-purchase of the manufactured home and its warranties from which the consumer's cause of action arises.

(g) Within 20 days following receipt of service of the application and verified claim, the board of trustees 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 on behalf of, and in the name of, the registrant or surety; in taking such action the board of trustees shall act only to protect the fund from spurious or unjust claims or to assure compliance with the requirements for recovery under this section.

(h) The court shall set a hearing on the application at the earliest possible time following 30 days from the date on which the board of trustees was served. Not less than 10 days' notice shall be given the applicant and the board of trustees. 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 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 in recovering from the fund. The court shall enter its order specifically setting forth the actual damages and attorney's fees which the board of trustees 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 or any other tort claims which are not recoverable against a surety as set forth in Section 13 of this article.

(i) Within 60 days following receipt of the order of the court, the board of trustees shall pay to the consumer a sum equal to the amount of actual damages and attorney's fees awarded by the court in its order; however, under no circumstances shall any consumer be paid an amount in excess of \$50,000 per home. Prior to payment, the consumer shall execute an assignment to the board of trustees 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.

(j) The board of trustees shall notify the department of the name of any manufacturer, retailer, broker, or installer named in a judgment which is the basis for a claim against the fund. If the person named is still registered with the department, the department shall immediately suspend the registration, without hearing, by notifying the registrant by certified mail, return receipt requested.

(k) The board of trustees, in its discretion, may try to recover from the registrant, the judgment debtor, or its surety any sums paid to consumers from the fund. Any sums recovered shall be deposited to the credit of the fund.

(l) The provisions of this section do not apply to, and a consumer shall not recover against the fund as a result of, any claim against a registrant resulting from a cause of action directly related to the sale, lease-purchase, exchange, brokerage or installation of a manufactured home prior to September 1, 1987.

(m) The board of trustees shall contract with the Texas Department of Labor and Standards to serve and act as manager of the fund. The manager shall handle the administrative duties of the fund, keep such books and records as may be required by the board of trustees, cause appearances to be entered in hearings or judicial proceedings as may be necessary to protect the fund from spurious or unjust claims and to assure compliance with the requirements for recovery under this section, pay claims, and invest and reinvest the fund's assets in accordance with instructions from the board of trustees. The manager of the fund shall be paid its reasonable and necessary costs and expenses for the management of the fund; however, such costs and expenses shall only be paid out of the interest earnings of the fund and not from the proceeds of the additional title fee charge or other assets which the fund may recover.

(n) Neither the fund, nor the board of trustees, shall be liable to any consumer for recovery if the fund does not have the funds necessary to pay the amounts awarded by an order of the court. If the fund does not have sufficient assets to pay the consumer, it shall log the time and date of receipt of any order by a court for payment to a consumer. As funds become available, the board shall pay the consumer whose unpaid order is the earliest by time and date.

SECTION 12. Chapter 32, Tax Code, is amended by adding Section 32.014 to read as follows:

Sec. 32.014. TAX LIEN ON MANUFACTURED HOME SUBJECT TO SECURITY INTEREST. (a) A tax lien for a tax and any penalties or interest on the tax imposed on a manufactured home does not attach to the real property on which the manufactured home is located, even if the manufactured home is attached to the real property by installation on a permanent foundation, if, on the January 1 on which the tax is imposed, the manufactured home is subject to a lien of record on a document of title issued on the manufactured home by the department.

(b) *In this section, "manufactured home" has the meaning assigned by Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes).*

SECTION 13. Section 3A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3A. DEFINITIONS BINDING. The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" set forth in Section 3 of this article are binding on all persons and agencies in this state as a matter of law including local political subdivisions ~~[of this state]~~ and home-rule cities. *A mobile home is not a HUD-code manufactured home and a HUD-code manufactured home is not a mobile home for any purpose under the laws of this state.*

SECTION 14. Subsection (2), Section 5, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.05, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) In a transaction involving more than one creditor, ~~the [each creditor whose identity is known at the time of the execution of the credit document shall be clearly identified. The]~~ disclosure of any one item by any creditor satisfies the requirement to disclose that item regardless of which creditor makes the disclosure.

SECTION 15. Section 10, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.10, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. DEFAULT.

(1) A creditor may accelerate the maturity of any part or all of the amount owing on a credit transaction only if the consumer is in default on the performance of any obligation under the credit transaction.

(2) *Except in the case of abandonment, voluntary surrender, or other extreme circumstances, any action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, shall comply with the regulations of the Federal Home Loan Bank Board relating to the disclosure required to repossess, foreclose or accelerate the outstanding balance on a manufactured home. [Before the 31st day before the day on which the creditor takes any action to accelerate the maturity of any debt, to start any legal action to recover under such an obligation, or to take possession of any security under the credit transaction, the creditor shall mail by registered or certified mail to the address where the manufactured home is located a written notice of intent to take the action. The notice must set forth in a clear and concise manner:*

~~[(a) the particular obligation or security interest, including the date of the credit transaction according to the records of the creditor, as well as a brief description of the manufactured home;~~

~~[(b) the nature of the default claimed, which may be stated in general terms, for example: "failure to maintain property damage insurance";~~

~~[(c) the action that the creditor proposes to take at the expiration of the notice period; and~~

~~[(d) the right of the consumer to cure the default and the exact manner in which to cure, including the sum of money that must be tendered, if any, in order to cure, the individual or office address to whom it must be tendered, and the form of acceptable payment in accordance with the provisions of this title.~~

~~[(3) If the consumer has abandoned or voluntarily surrendered the property that is the subject of the credit transaction, the creditor is not required to give the notice required by Subsection (2) of this section if the creditor retains evidence of the abandonment or surrender to the satisfaction of the commissioner.]~~

(3) [(4)] In calculating the amount owing, the creditor shall grant to the consumer a refund of the finance charge calculated in accordance with Section 6 of this chapter. In addition, the credit document may provide for the payment of an attorney's reasonable fee and for court costs and disbursements. In the event of repossession, sequestration, or other action necessary to secure possession of the manufactured home securing the payment of the credit transaction, the credit document may provide for the charge and



collection of actual and reasonable out-of-pocket expenses incurred in connection with repossession or foreclosure, including costs of storing, reconditioning, and reselling the manufactured house, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code, as amended. In the event of default, any sum in the insurance and tax escrow account established under this chapter shall be applied to the remaining balance of the credit transaction.

(4) [(5)] In the event of acceleration, the outstanding debt as calculated in accordance with this section, including any expenses actually incurred and authorized by this section, bears interest at a rate equal to the contract rate or last adjusted rate. The creditor who possesses the first recorded perfected security interest may repossess the manufactured home. If the manufactured home has been affixed to real property, the creditor, after notice pursuant to this section, may remove the manufactured home from the real property in accordance with the applicable provisions of the Business & Commerce Code, as amended, as if it were personal property.

SECTION 16. Section 12, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.12, Vernon's Texas Civil Statutes), is amended by adding Subdivision (5) to read as follows:

*(5) If the consumer fails to pay any taxes that have been assessed against the manufactured house, then the creditor may treat the failure as an event of default, or may pay to the appropriate taxing authority the unpaid taxes, together with any interest or other charge, and add to the balance owed under the credit document all sums paid to the taxing authority, together with interest, at the rate of interest or time price differential applicable to the balance of the contract or loan. In addition, the consumer and creditor may agree to have the creditor pay the taxes, and any other charges or interest, assessed by any taxing authority after the date of the credit document, and include the amounts paid in the unpaid balance, together with interest, at the contract rate or time price differential rate applicable to the credit transaction. In the case of the forced payment of taxes by the creditor, the creditor shall notify the consumer that the taxes, other charges and interest have been paid, and that the amounts have been added to the debt. The creditor may require the consumer to pay the amounts in any period and in any number of installments 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.*

SECTION 17. Chapter 6A, Title 79, Revised Statutes (Article 5069-6A, Vernon's Texas Civil Statutes), is amended by adding a new Section 18 to read as follows:

*Sec. 18. UNPAID RENTAL FOR REAL PROPERTY OCCUPIED BY MANUFACTURED HOME. (1) Except as provided in this section, any lien or charge against a manufactured home for unpaid rental for the real property on which the manufactured home is or has been located is subordinate to the rights of a creditor with a security interest or lien, perfected pursuant to this chapter, and recorded on the document of title issued on the manufactured home. If a creditor with such a perfected security interest or lien repossesses a manufactured home at a time when rental charges for the real property have not been paid, and the owner of the real property has given written notice of such unpaid charges to the creditor, then the owner of the real property has a possessory lien to secure rental accrued from and after 15 days after the creditor receives the written notice of the unpaid charges if the manufactured home is abandoned or voluntarily surrendered by the consumer; however, if the manufactured home is not abandoned or voluntarily surrendered, the possessory lien secures rental accrued from and after 15 days following (i) the expiration of all notice and grace periods which the creditor is required to give the consumer prior to repossession under any applicable contract, law or regulation and (ii) the creditor has received the written notice of the unpaid charges. The maximum rental charge which is not subordinated under this article, and which is secured by the possessory lien, is a daily rate equal to one-thirtieth the amount of the monthly payment last paid by the consumer, beginning from and after the date determined by this subsection.*

(2) Notice required by this section shall be mailed by certified mail, return receipt requested.

(3) Unless the owner of the real property has a possessory lien which has priority pursuant to this section, it shall be unlawful for the owner of the real property to refuse to allow the creditor to repossess and move the manufactured home. In the event that the owner of the real property refuses to allow the creditor to repossess and move the home, then the owner of the real property shall be liable to the creditor for each day that the owner of the real property unlawfully maintains possession of the home at a daily rate equal to one-thirtieth of the monthly payment last paid by the consumer on the contract as provided for herein, as well as any other actual or exemplary damages, injunctive relief, attorney's fees and court costs.

(4) The owner of the real property, pursuant to a possessory lien which has priority pursuant to this section, is entitled to recover the rental charges as set forth in this section. If the owner of the real property is required to retain legal counsel to recover the amounts subject to the possessory lien, such owner is entitled to recover any other actual damages as well as attorney's fees and court costs incurred.

SECTION 18. Section 16, Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.16, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. CONSUMER CREDIT COMMISSIONER. 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.*

SECTION 19. Section 18, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. MISCELLANEOUS PROVISIONS. (a) Any waiver by a consumer of the provisions of this article [Act] is contrary to public policy and is unenforceable and void.

(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. [No provision of this Act shall exclude any other remedy available at law or equity to the consumer.]*

(c) If any provision of this article [Act] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this article [Act] are declared to be severable. *This article shall be liberally construed in its entirety to accomplish the purposes set forth in Section 2.*

(d) If a retailer, broker, or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, or installer is voidable *within two years from the date of the purchase of the manufactured home* at the option of the consumer. A consumer's contract for the purchase, exchange, or lease-purchase of a new manufactured home is also voidable *within two years from the date of the purchase of the manufactured home*, if the retailer purchased the home from an unregistered manufacturer in violation of Section 6, Subsection (h) of this article [Act].

(e) Nothing in this article [Act] shall be construed to modify or amend any provisions of The Real Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes). The provisions of this article, as amended, shall not apply to a person licensed as a real estate broker or salesman pursuant to The Real Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes), who, as agent of the buyer or seller, negotiates the sale or lease of a *manufactured [mobile] home* and the real property to which it is affixed; provided that the ownership of the *manufactured [mobile] home* and

real property are of record in the same person and that such sale or lease shall be in a single real estate transaction.

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, a registered *retailer or installer* is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or by the State Department of Highways and Public Transportation pursuant to Article 6701-1/2, Title 116, Revised Statutes. The department shall cooperate with the State Department of Highways and Public Transportation by providing current lists of registered manufactured housing manufacturers, retailers, and installers.

(g) A local governmental unit or *home-rule city* may not require any permit, fee, bond, or insurance for the installation of manufactured housing by a registered *retailer or installer* except as may be approved by the department.

(h) *When a consumer files a cause of action against any retailer or manufacturer of a manufactured home, any claim based upon the actions of the retailer or manufacturer which the consumer may assert against any holder of the manufactured home debt instrument must be asserted against such holder of the debt instrument in the primary suit against the retailer or manufacturer. The holder of the debt instrument shall be entitled to full indemnity from the retailer or manufacturer for claims based upon the acts or omissions of such retailer or manufacturer. Unless the consumer joins the holder of the debt instrument in the primary suit against the retailer or manufacturer, any judgment obtained in the primary suit against the retailer or manufacturer shall not be conclusive as to the holder of the debt instrument nor shall it be admissible by the consumer in any action against the holder of the debt instrument.*

(i) *In the event that a consumer asserts a claim or defense against the holder of the debt instrument which arises from claims and defenses of the consumer against the retailer of a manufactured home, then the consumer's recovery against the holder of such a debt instrument arising from claims and defenses by the consumer against the retailer shall not exceed the actual amounts paid by the consumer to the holder of such a debt instrument and cancellation of the remaining balance on the debt instrument. If the remaining balance of the debt instrument is cancelled, the manufactured home shall be returned to the holder.*

SECTION 20. Sections B and F, Article 6701-1/2, Revised Statutes, are amended to read as follows:

B. (1) The application for a permit and the permit shall be in the form as prescribed by the State Department of Highways and Public Transportation; however, the permit must contain the overall length, width, and height of the manufactured home and the towing vehicle in combination. The overall combined length of the manufactured home and the towing vehicle shall include the length of the hitch or towing device. The height shall be measured from the roadbed to the highest elevation of the manufactured home. The width of the home or section shall include any roof or eave extension or overhang on either side.

(2) The permit shall contain the route for the transportation of the manufactured home from the point of origin to the point of destination. The route shall be the shortest [~~practical~~] distance including divided and interstate systems, except where construction is in progress or bridge or overpass width or height would create a safety hazard [~~, or except highways in urban areas with heavy traffic conditions~~].

F. A permit shall be *valid* [~~good~~] for a period of *five* [~~up to ten (10)~~] days [~~and valid only for a single continuous movement~~].

SECTION 21. Subsection (7), Section 1, Article 6701b-1, Revised Statutes, is amended to read as follows:

(7) "Road-tractor" means a motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or as any part of the weight of a vehicle or load so drawn; *for purposes of this article such term also includes motor vehicles used for towing manufactured housing.*

SECTION 22. Subsection (a), Section 32.015, Tax Code, is amended to read as follows:

(a) The collector for a taxing unit may file notice of the unit's tax lien on a manufactured home with the Texas Department of Labor and Standards *if the tax has not been paid by January 31 of the year following the year for which the tax is assessed.* The notice must include:

- (1) the name and address of the owner of the manufactured home; and
- (2) the amount of tax owed, the tax year for which the tax was imposed, and the name of the taxing unit that imposed the tax; and
- (3) the correct identification number of the manufactured home.

SECTION 23. 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 April 27, 1987, by the following vote: revenue dedication: Yeas 123, Nays 15, 2 present, not voting; remainder of the bill: Yeas 130, Nays 3, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 855 on May 18, 1987, by the following vote: Yeas 130, Nays 7, 2 present, not voting; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas. Passed by the Senate, with amendments, on May 14, 1987, by the following vote: Yeas 30, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 18, 1987.

Effective June 18, 1987.