

# TEXAS MANUFACTURED HOUSING STANDARDS ACT

*Texas Civil Statutes, Article 5221f*

*Administered by the Texas Department of Housing and Community Affairs*

## SHORT TITLE

### Section 1.

This Act may be cited as the Texas Manufactured Housing Standards Act.

## PURPOSE

### Section 2.

The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

## DEFINITIONS

### Section 3.

Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

- (1) "Advertising" or "advertisement" means any commercial message which promotes the sale, exchange, or lease-purchase of manufactured homes and which appears in, or is presented on, radio, television, a public-address system, newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, other printed material, electronic media, an inside or outside sign or window display, or in point-of-sale literature or price tags. Materials which are educational or that may be required by law do not constitute advertising. Any advertisement relating to manufactured housing shall be considered as an offer to sell, exchange, or lease-purchase to consumers.

- (2) "Alteration" means the replacement, addition, and modification or removal of any equipment or its installation in a new manufactured home after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.
- (3) "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.
- (4) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding. A broker may or may not be an agent of any party involved in the transaction. A person who maintains a location for the display of manufactured homes is not a broker but is a retailer. The term shall not apply if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate; however, the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply.
- (5) "Code" means the Texas Manufactured Housing Standards Code.
- (6) "Consumer" means any person other than one registered under this Act that seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.
- (7) "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.
- (8) "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.
- (9) "HUD-code manufactured home" means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not

include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).

- (10) "Installation," when used in reference to manufactured housing, means the construction of the foundation systems, whether temporary or permanent, and the placement and erection of a manufactured home or manufactured home components on the foundation system and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable sections or components, and minor adjustments.
- (11) "Installer" means any person, including a retailer or manufacturer, that contracts to perform or performs installation functions on manufactured housing.
- (12) "Label" means a device or insignia issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development, and is permanently affixed to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.
- (13) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.
- (14) "License holder" means a person that holds a license issued by the department as a manufactured housing manufacturer, retailer, broker, rebuilder, salesperson, or installer.
- (15) "Manufactured housing" or "Manufactured home" means a HUD-code manufactured home or a mobile home and collectively means and refers to both.
- (16) "Manufacturer" means a person that constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.
- (17) "Mobile home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.
- (18) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.
- (19) "Retailer" means a person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. A person is not considered a retailer unless the person is engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

- (20) "Salesperson" means a person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.
- (21) "Seal" means a device or insignia issued by the director to be affixed to used manufactured homes for titling purposes, as required by the director. The seal shall remain the property of the department.

## **DEFINITIONS BINDING**

### **Section 3A.**

The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" set forth in Section 3 of this Act are binding on all persons and agencies in this state as a matter of law including local political subdivisions 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. These terms shall not be defined in any manner which is not identical to the definitions set forth in Section 3 of this Act.

## **MANUFACTURED HOUSING STANDARDS**

### **Section 4.**

- (a) The director shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.
- (b) The director shall adopt standards and requirements for the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Manufactured Home Construction and Safety Standards Act of 1974.
- (c) The director shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that the installation of manufactured housing on both permanent and nonpermanent foundation systems resists overturning and lateral movement of the housing according to the design loads for the particular wind zone for which the housing was constructed.
- (d) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the director. The department shall establish an inspection program whereby at least 25 percent of the manufactured homes installed are inspected on a sample basis for compliance. The department's program shall place priority on multi-section homes and homes installed in Wind Zone II.
- (e) A local governmental unit of this state, without the express approval of the board following a hearing on the matter, may not adopt different standards from those

promulgated by the director for the construction or installation of manufactured housing within the local governmental unit. The local governmental unit must demonstrate that the public health and safety require the different standards.

- (f) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any local governmental unit, the director shall publish a notice and conduct a public hearing under Section 9 of this Act.
- (g) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the director shall state the date it shall take effect as provided by Section 9 of this Act.
- (h) The department shall cooperate with all units of local government in this state and shall authorize local units of government, on request, to make and perform inspection and enforcement activities related to the construction of foundation systems and the erection and installation of manufactured housing at the homesite pursuant to contracts or other official designations and the rules and regulations of the director. The department shall notify each local governmental unit biennially in writing to advise the local governmental unit of the program for contracting installation inspections. The department shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed within the local governmental unit and may establish cooperative inspection training programs. The department may withdraw the authorization if the local governmental unit fails to follow the rules, regulations, interpretations, and written instructions of the department.

## **MUNICIPALITIES**

### **Section 4A.**

- (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 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 45 days from receipt of the application setting forth the reason.
- (c) This section shall not affect the validity of any deed restriction that is otherwise valid.

*Sec. 5. Repealed by Acts 1979, 66th Leg., P. 1417, ch. 625, Sec. 18, eff. Sept. 1, 1979.*

## REGULATIONS

### Section 6.

- (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.
- (b) *Repealed by Acts 1985, 69th Leg., ch. 84, Sec 4, eff. Jan. 1, 1986.*
- (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 label 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.
- (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 licensed retailer.
- (f) 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 licensed 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) 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 constructed by a manufacturer which was not licensed with the department at the time of construction.

- (h) It is unlawful for a person to sell, convey, or otherwise transfer to a consumer in this state a manufactured home for which a salvage title has been issued under Section 8 of this Act. A salvaged manufactured home may only be sold to a licensed retailer or licensed rebuilder.
- (i) *Repealed by Acts 1989, 71st Leg., ch. 1039, Sec. 5.01(11), eff. Sept. 1, 1989.*
- (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.
- (k) 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.
- (l) It is unlawful for a retailer or a salesperson to aid or assist a consumer in preparing or providing false or misleading information on a document related to the purchase or financing of a manufactured home or for a salesperson to submit information known to be false or misleading to a retailer or for a retailer or a salesperson to submit information known to be false or misleading to a credit underwriter or lending institution.
- (m) It is unlawful for a retailer, salesperson, or agent of the retailer to refuse to refund a consumer's deposit except in accordance with this subsection.
  - (1) The deposit must be refunded within 15 days following the receipt of written notice from the consumer requesting the refund.
  - (2) If a retailer, salesperson, or agent of the retailer violates the provisions of this subsection, the consumer may recover, cumulative of other remedies, three times the amount of the deposit plus reasonable attorney's fees.
  - (3) The consumer's deposit may only be retained if:
    - (A) the consumer specially orders a home from the manufacturer because the home is not in the retailer's inventory;
    - (B) the home conforms to the specifications of the special order and the representations, if any, made to the consumer;

- (C) the consumer fails or refuses to accept delivery and installation of the home by the retailer; and
  - (D) the consumer was given conspicuous written notice of the requirements for retaining the deposit.
- (4) The retailer must not retain more than five percent of the estimated cash price of the home which is specially ordered and must refund any amount of the deposit which exceeds five percent.
- (5) This subsection does not apply to a deposit in escrow in a real estate transaction nor to a down payment as shown on an executed retail installment sales contract.

### **LAND-HOME REGULATIONS**

#### **Section 6A.**

- (a) This section is applicable to those transactions in which the manufactured home will be sold as personal property and titled under Section 19 of this Act. This section does not apply to real estate transactions when the manufactured home is, or will become, real estate under Section 2.001, Property Code.
- (b) The retailer is prohibited from selling, or representing for sale, or offering for sale any real estate in conjunction with the sale of a manufactured home except as may be authorized by the department consistent with the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).
- (c) A retailer, broker, salesperson or any person acting on behalf of a retailer or broker shall not receive or accept any compensation or consideration of any kind or type whatsoever from the seller of the real estate or any person acting on the seller's behalf. No part of the down payment on the purchase of the manufactured home nor the payment of any fees, points, or other charges or "buy-downs" shall be from funds from the seller of the real estate or any person acting on the seller's behalf.

### **WIND ZONE REGULATIONS**

#### **Section 6B.**

- (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.
- (b) A manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development in order to be installed in a Wind Zone II county.
- (c) All manufactured homes constructed prior to September 1, 1997, may be installed in Wind Zone I or Wind Zone II without restriction.

- (d) A consumer purchasing a manufactured home constructed on or after September 1, 1997, to Wind Zone I standards must be given a notice by the selling retailer that:
  - (1) the home was not designed nor constructed to withstand hurricane force winds which may occur in Wind Zone II or III areas; and
  - (2) the home is not permitted to be installed in Wind Zone II counties in Texas, and there may be restrictions in other states prohibiting installation in Wind Zone II or III areas.
- (e) The notice required by this section shall be given the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

## **REGISTRATION**

### **Section 7.**

- (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 licensed as a manufactured housing manufacturer with the department and possesses a valid manufacturer's license at the time the home is constructed or assembled.
- (b) Except as otherwise expressly provided in this Act, 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 license.
- (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 license.
- (d) A person may not perform any installation function on manufactured housing in the state, unless the person possesses a valid installer's license and files proof of insurance as required by the director. The director may issue a temporary installer's license to a homeowner for the installation of the owner's home in accordance with applicable requirements, standards, and regulations of the director, 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 license as a manufacturer, retailer, broker, rebuilder, or installer must file with the director an application for a license 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 license 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 licenses are valid for one year and are renewable as provided by the director. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.
- (h) If a change occurs in the information filed with the director under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.
- (i) While acting as an agent for a license holder, an employee is covered by the business entity's license and is not required to be individually licensed. An independent contractor or business entity may not operate under the license of another business entity except as an agent or subcontractor of a licensed installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor except as provided in Subsection (l) of this section.
- (j) The director, after notice and hearing under Section 9 of this Act, 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 license if the director finds that the applicant or license holder:
- (1) knowingly and willfully violated any provision of this Act or any rule, administrative order, or regulation made pursuant to this 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 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 Act;

- (7) furnished false information on any application, report, or other document filed with the department;
  - (8) has a record of criminal convictions within the five years preceding the date of the application that, in the opinion of the director, renders the applicant unfit for licensing; or
  - (9) failed to file the bond or post other security for each location as required by Section 13 of this Act.
- (k) The director shall conduct any hearing involving the denial, renewal, revocation or suspension of a license in accordance with Chapter 2001, Government Code. The department may place on probation a person whose license is suspended. If a license suspension is probated, the department may require the person:
- (1) to report regularly to the department on matters that are the basis of the probation;
  - (2) to limit practice to the areas prescribed by the department; or
  - (3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.
- (l) 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 licensed by the state as an air-conditioning contractor. The regulation of air-conditioning contractors is exclusively reserved to the Texas Department of Licensing and Regulation.
- (m) A person may not act as a salesperson of manufactured housing unless the person is licensed with the department. Each applicant for a salesperson's license shall file with the director an application giving such information as the director 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 licensed as a retailer or broker does not have to apply for licensing as a salesperson so long as such individual is properly listed in the retailer's or broker's application for license. The salesperson is the agent of the retailer or broker. The license shall be an annual license. A retailer or broker shall not employ, retain, or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may work or sell for one or more retailers, brokers, or sales locations.
- (n) A person may not alter, repair, or otherwise rebuild a salvaged manufactured home, as such term is defined in Section 8 of this Act, unless the person is duly licensed with the department as a manufactured home rebuilder or retailer and unless the person complies with the rules and regulations of the director relating to the rebuilding of salvaged manufactured homes.
- (o) Any person not licensed or registered with the department or a predecessor agency as of September 1, 1987, must attend and complete twenty (20) hours of instruction in the law

and consumer protection regulations as a prerequisite for a license. The instruction shall be given not less than one time each quarter. No test shall be made a prerequisite of licensing, but actual attendance at the instruction sessions is required. The director shall not issue a license until the instruction is completed. This subsection does not apply to a license holder or registrant making application to license additional business locations, to renew or reinstate a license, or to make application for licensing as a salesperson. In lieu of this instruction requirement, a manufacturer may request that a one-day, in-plant training session be presented by an authorized representative of the department. The manufacturer shall reimburse the department for the actual costs of the training session.

- (p) Notwithstanding any provision of this Act to the contrary, any state or national bank, state or federal savings and loan association or federal savings bank, or state or federal credit union engaged in the business of selling or offering for sale, exchange, or lease-purchase manufactured homes that the institution has acquired as a result of repossession of its collateral is not required to attend any school or file any bond or post other security in order to be licensed as a retailer.
- (q) In lieu of the instruction requirements imposed under Subsection (o) of this section, the director may recognize and approve a training program for an applicant for a license that is conducted by a nonprofit educational institution or foundation.
- (r) A license shall be renewed if the renewal application and payment of the annual fee are received by the department prior to the date on which the license expires. The renewal license expires on the first anniversary of the date the license was renewed. If the department needs additional information for the renewal application or verification of the continuing insurance or bond coverage, the license holder shall have 20 days following the receipt of notice from the department to furnish the requested information or verification.
- (s) A person licensed as a real estate broker or salesperson under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) may act as a manufactured housing broker or salesperson without holding a license under this Act or posting a surety bond or other security under this Act, provided that any negotiations for the sale, exchange, or lease-purchase of a manufactured home are conducted for a consumer for whom the person is also acting as a real estate broker or salesperson consistent with Section 18(e) of this Act.
- (t) A person whose license has expired may not engage in activities that require a license until the license has been renewed.
- (u) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.
- (v) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

- (w) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.
- (x) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without fulfilling the instruction requirements of Subsection (o). The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.
- (y) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

## **EDUCATION PROGRAMS**

### **Section 7A.**

- (a) The department may recognize, prepare, or administer certification programs for persons regulated under this Act. Participation in the programs is voluntary.
- (b) The board shall recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the continuing education programs to the extent required by the board to retain the person's license.
- (c) To prepare or administer a certification program or a continuing education program under this section, the board may contract with a private, nonprofit, tax-exempt organization listed in Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)) or with an educational institution.
- (d) The department shall issue appropriate certificates to those persons who complete a certification program or who participate in a continuing education program under this section.

## **USED HOMES**

### **Section 8.**

- (a) A person may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used manufactured home to a consumer unless the appropriate seal or label is affixed to it. If the used manufactured home does not have a seal or label, the person must apply to the department for a seal and pay the fee.

*(Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 351, §2, eff. Sept. 1, 1999)*

- (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 without giving a written warranty that the manufactured home is habitable. The consumer has 60 days after the date of the sale, exchange, or lease-purchase agreement to notify the seller in writing of any defects that make the home uninhabitable. Failure to give this required notice terminates any

obligations and liabilities of the seller under this section. The warranty must conspicuously disclose this requirement to the consumer. 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. "Business use" means any use other than for a dwelling or residence. The warranty requirement imposed by this subsection does not apply to a sale, exchange, or lease-purchase of a manufactured home from one consumer to another consumer.

*(Text of subsec. (b) as amended by Acts 1999, 76th Leg., ch. 1369, §6, eff. Sept. 1, 1999)*

- (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 without giving a written warranty that the manufactured home is habitable. The consumer has 60 days after the date of the sale, exchange, or lease-purchase agreement to notify the seller in writing of any defects that make the home uninhabitable. Failure to give this required notice terminates any obligations and liabilities of the seller under this section. The warranty must conspicuously disclose this requirement to the consumer. 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. "Business use" means any use other than for a dwelling or residence. This subsection does not apply to a sale, exchange, or lease-purchase from one consumer to another consumer.
- (c) For purposes of all provisions of this Act 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. The seller or transferor shall forward to the department properly completed documents for the transfer of title within 30 days after the date the transfer of ownership is effective or after the date the seller or transferor obtains possession of the necessary executed documents.
- (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 director. 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 Act, provided that the sale, exchange, or transfer by a lease-purchase is (1) to or through a licensed 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 licensed retailer, the retailer is responsible and liable for compliance with the provisions of this Act 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) For the purposes of this Act, a "salvaged" manufactured home means a manufactured home that has been scrapped, dismantled, or destroyed or for which an insurance company has paid the full insured value. 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. The person possessing the original document of title to a used manufactured home that is salvaged must surrender such document of title to the director for cancellation of the title and issuance of a salvage title. If a new manufactured home becomes salvaged, the retailer must remove the label and must surrender the label along with the manufacturer's certificate of origin to the director for issuance of the salvage title. If the manufactured home is rebuilt in accordance with the provisions of this Act and the rules and regulations of the director, the director shall issue, upon proper application, a document of title in lieu of the salvage title.
- (h) Notwithstanding any provisions of this section to the contrary, the director, following a written application by the purchaser or transferee, may expressly authorize in writing a licensed retailer to sell or exchange a used manufactured home which is not or may not be habitable to or with governmental housing agencies or authorities or to nonprofit organizations providing housing for the homeless. As a part of the application the purchaser or transferee must certify to the receipt of a written notice that the home is not or may not be habitable. The form of such written notice shall be prepared by the consumer protection division of the attorney general's office and approved by the director. The purchaser or transferee shall not occupy the home or allow the home to be occupied as a residence or dwelling until such time as any necessary repairs to make the home habitable have been completed.
- (i) A tax collector is not required to comply with this section or other sections of this Act relating to the sale of a used manufactured home in relation to the sale of a manufactured home for the collection of delinquent taxes. If a manufactured home does not have a serial number, seal, or label, the tax collector may apply to the department for a seal, pay the applicable fee, and recover that fee as part of the cost of the sale of the manufactured home. The seal issued to the tax collector is for identification purposes only and may not be construed to imply that:
  - (1) the home is habitable; or
  - (2) the purchaser of the home at a tax sale may obtain a title document from the department without an inspection for habitability.

## **ADMINISTRATION AND ENFORCEMENT**

### **Section 9.**

- (a) The director is hereby charged with the administration and enforcement of this Act.
- (b) The director shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Article to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The director shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Manufactured Home Construction and Safety Standards Act of 1974.
- (c) The director shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Manufactured Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all HUD-code manufactured home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development. The state plan must provide for the use of third-party inspection agencies approved by the Department of Housing and Urban Development to act as an In Plant Inspection Agency.
- (d) In this section "rule" means a standard, requirement, regulation, order, and statement of general applicability that implements, interprets, or prescribes law or policy or that describes the procedures or practices of the department. Internal management operating procedures that affect the private rights or procedures of license holders or consumers, including requirements for the use of a particular form, are also rules. An administrative order that is not of general applicability but that is directed to a specific license holder relating to warranties, the correction of defects, or compliance with the law and regulations is not a rule.
- (e) All rules shall be promulgated and adopted in accordance with Chapter 2001, Government Code, and with the provisions of this section. Public and administrative hearings shall be held in Travis County unless all parties agree to another location.
- (f) A proposed rule, amendment to a rule, or repeal of a rule shall be published in the Texas Register not less than 30 days prior to the date of a public hearing set to consider the testimony of interested persons. Notice of the time and place of the public hearing shall be published in the Texas Register not less than 30 days prior to the date of the hearing. The director shall also afford interested persons the opportunity to participate in the rulemaking process through the submission of written data and statements of support or opposition.
- (g) A rule, amendment to a rule, or repeal of a rule as finally adopted shall be published in the Texas Register and include a statement of the effective date. The effective date of a rule relating to installation standards shall be not less than 60 days following the date of

publication of notice that the rule has been adopted. All other rules are effective 30 days following the date of publication.

- (h) The director may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursuant to this Act. The director may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act.
- (i) The director may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the director to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code.
- (j) The director may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.
- (k) When necessary or required by law, the director may obtain inspection search warrants.
- (l) The director may inspect manufactured homes at the borders of this state and adopt rules and regulations necessary for the inspection of all manufactured homes entering this state to assure compliance with the National Manufactured Home Construction and Safety Standards Act of 1974, the Texas Manufactured Housing Standards Code, and the rules and regulations of the director, and to assure payment of any use tax which may be due the State of Texas.
- (m) In order to protect the public health, safety, and welfare, and to assure the availability of low cost manufactured housing for all consumers, the director shall establish rules and regulations for the protection of the interests of consumers who occupy or desire to purchase or install manufactured housing and for the business conduct of those persons required to be licensed under this Act.

*Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, Sec. 18, eff. Sept. 1, 1979.*

## **FEES**

### **Section 11.**

- (a) There shall be a fee in an amount set by the board 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 board 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 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 canceled to determine if the home is habitable for the issuance of a new title.
  - (5) There shall be a fee for the issuance of seals for used mobile or HUD-code manufactured homes.
- (c) The board shall set fees for the issuance and renewal of manufacturers', retailers', brokers', salespersons', rebuilders', and installers' licenses; and fees for the issuance of rebuilder licenses.
- (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 licenses.
- (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 Act.
- (f) All fees assessed under this section shall be paid to the State Treasurer and placed in the General Revenue Fund.

- (g) The board shall set the fees imposed under this section in amounts that are reasonable and necessary to defray the costs of administering this Act.

*Section 12. Repealed by Acts of the 65th Legislature, eff. September 1, 1977.*

## **SECURITY**

### **Section 13.**

- (a) The department may not issue or renew a license unless a surety bond or other security in the form prescribed by the director is filed with the department as provided by this section.
- (b) If a surety bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is posted, the other security must be maintained in or by a banking institution located in this state.
- (c) The bond or other security shall be payable to and for the benefit of the special account established under Section 13A of this Act.
- (d) 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.
- (e) 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, or located within 300 feet of, 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.
- (f) 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 \$50,000. 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 licensed 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 license shall not be required to be bonded or file any security to secure a license as a broker or an installer. A new bond shall not be required for any change of ownership of a corporation licensed with the department nor

for any change of a location; however, a proper endorsement of the original bond may be required by the director.

- (g) The bonding company must provide written notification to the director at least 60 days prior to the cancellation of a surety bond required by this section. Any other security on file with the department shall remain on file and be maintained for two years after the person ceases business as a manufacturer, retailer, broker, rebuilder, or installer or at such later time as the director may determine that no claims exist against the security.
- (h) If a bond is canceled, the license is suspended on the effective date of cancellation. If a surety files for liquidation or reorganization in bankruptcy or is placed in receivership, the license holder is entitled to 60 days from the date notice of the filing or receivership was received to obtain other security. If the required face amount of any other security is impaired by the payment of a claim, the license holder is entitled to 60 days to restore the security to its required face value.
- (i) Subject to the limitations in this section, the bond or other security is liable for, and shall reimburse the recovery fund under Section 13A of this Act, the amount of any claim paid out of the fund by the director to a consumer that resulted from an act or omission of the license holder who filed the bond or other security. Payment by the surety or from the other security shall be made not later than the 30th day from the date of receipt of notice from the director that a consumer claim has been paid. If for any reason the surety or other security fails to make timely payment of a claim to the fund, the attorney general shall file suit for recovery of the amount due the fund. Venue for the suit is in Travis County.
- (j) As trustee of the fund, the director shall prepare an informational pamphlet informing the consumers of their rights to recover from the recovery fund. The director may contract with private parties for the printing and distribution of the pamphlets.

## **RECOVERY FUND**

### **Section 13A.**

- (a) There is hereby established a special account in the general revenue fund designated as the manufactured homeowners' recovery fund ("fund"). The fund shall be administered by the director.
- (b) No bond or other security shall be required of the director in the director's capacity as administrator of the fund.
- (c) The department shall charge and collect an additional fee of \$10 for each title transaction for which it charges a fee. This additional fee shall be deposited in the fund.
- (d) The fund, the fees collected for the fund, and income earned from investment of the fund shall be used exclusively for the protection programs set forth in this section. Money in the fund may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas. Income from the fund shall be deposited to the credit of the

fund. No investments may be made that impair the liquidity necessary for payment of the protection programs as provided by this section.

- (e) Subject to the limitations of Section 13 of this Act and of this section, the fund shall be used to compensate consumers who sustain actual damages resulting from unsatisfied claims against a manufacturer, retailer, broker, or installer licensed with the department if the claims resulted from a violation of:
  - (1) this Act;
  - (2) a rule issued by the director;
  - (3) the National Manufactured Housing Construction and Safety Standards Act;
  - (4) the rules and regulations of the United States Department of Housing and Urban Development; or
  - (5) the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et.seq., Business and Commerce Code.
- (f) The consumer must file a written complaint in the form required by the director not later than the second anniversary of the date of the alleged act or omission causing the actual damages, or the second anniversary of the date the act or omission is discovered or should reasonable have been discovered. Failure to timely file the claim precludes recovery from the fund. On receipt of a properly verified complaint, the department shall notify the license holders as appropriate and investigate the claim to determine its validity and whether or not the complaint can be resolved by remedial action of the license holders. If there is a dispute between the license holders as to responsibility for the complaint, or between any license holder and the consumer, the department shall conduct an informal dispute resolution process, including a home inspection if appropriate, for a resolution of the disputes. If it is possible to secure the agreement of the parties, the department shall prepare and file with the director a written report of the agreement.
- (g) During the informal dispute resolution process, the department shall make a preliminary determination as to the responsibility and liability of the manufacturer, retailer, and installer for claims determined to be valid. The license holders shall be afforded an opportunity to comment on the preliminary determination under consideration by the department before the department makes a final determination. If a license holder is out of business, is no longer licensed, or has filed for liquidation or reorganization in bankruptcy, the department shall notify the license holder's surety and give the license holder's surety an opportunity to participate in the informal dispute resolution process. If a license holder or the license holder's surety fails or refuses to participate in the informal dispute resolution process after receiving notice of the claim, the license holder and the license holder's surety are bound by the department's final determination of responsibility and liability, and the department may suspend or revoke the license holder's license.

- (h) If the disputed claim is not resolved through the informal dispute resolution process, the parties may elect to submit the claim for formal, binding arbitration under Title 9, United States Code. The director by rule shall establish procedures for the binding arbitration process and for the approval and selection of arbitrators.
- (i) The fund is not liable for, and the director may not pay, any punitive, exemplary, double, or treble damages, or damages for pain and suffering, mental anguish, emotional distress, or other analogous tort claims. The payment of actual damages is limited to the actual, reasonable costs and expenses, not including attorney's fees, that the consumer has incurred or will incur to correct or resolve the acts or omissions found to be violations as set forth in Subsection (e) of this section. By way of further limitation, a consumer may not be paid more than \$35,000 in actual damages, and attorney's fees, costs, and expenses are limited to 20 percent of the amount of actual damages. Neither the fund nor the director is liable to the consumer if the fund does not have the funds necessary to pay the actual damages and attorney's fees determined to be payable. The director shall record the time and date of all verified complaints and, as funds become available, the director shall pay the consumer whose claim in the earliest by time and date.
- (j) One million dollars shall be reserved in the fund for payment of valid consumer claims. The costs and expenses of the director and the department in administering and managing the fund, keeping books and records, investigating consumer complaints, and conducting the informal dispute resolution process shall be paid out of the fund unless the balance of the fund is less than \$1 million.
- (k) 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 license holder 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.

## **WARRANTIES**

### **Section 14.**

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

- (d) The 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 must give the consumer a copy, or a general description, of the manufacturer's new home construction warranty and the retailer's installation warranty prior to the signing of any binding retail installment sales contract or other binding purchase agreement. At the time of the initial installation at the consumer's homesite, the retailer must deliver the following documents:
- (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.
- (e) 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 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.
- (f) If the manufacturer or retailer fails to provide warranty service within the reasonable time allowed by the rules of the director, 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 license.
- (g) 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.
- (h) 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.
- (i) After receipt of a request for a home inspection, the department shall perform an inspection within 30 days. Within 10 days following the inspection, the department shall mail a 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 director 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.

- (j) The manufacturer, retailer, and installer shall comply with the initial report and warranty service orders of the director. The department may issue an amended report and warranty orders if all parties receive notification of and are given an opportunity to respond to the report and warranty orders. The amended report and warranty orders must supersede the initial report and warranty orders.
- (k) 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 director shall set a hearing at which the manufacturer or retailer, or both, shall show cause why the license should not be suspended or revoked. If, following the hearing, the director 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 license. If the director finds that the prior warranty service orders were incorrect in the determination of the respective responsibilities of the manufacturer, retailer, or both, the director shall enter a final order setting forth the correct responsibilities and the right of either the manufacturer or retailer to indemnification from the other. The director may also enter an order directing the manufacturer or retailer whose license is not revoked, or who is not out of business, to perform the warranty service responsibilities of the retailer or manufacturer whose license is revoked, or who is out of business, by giving the manufacturer or retailer performing such warranty service the right to indemnity against the other. The manufacturer or retailer entitled to indemnification by virtue of an order of the director pursuant to this subsection is a "consumer" for purposes of Sections 13 and 13A of this Act and may recover its actual damages and attorney's fees from the manufactured homeowners' recovery fund.
- (l) 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 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 the sale. The burden of proof is placed on the warrantor to establish that the defect is caused by the move.
- (m) 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.
- (n) When a new HUD-code manufactured home is permanently affixed to real estate, the manufacturer's certificate of origin is surrendered for cancellation, and a notice of attachment or certificate of attachment is filed in the real property records of the county, the seller of the real estate may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required in this section. If a combination warranty is given, the manufacturer and retailer are not required to give

separate written warranties; however, the manufacturer and retailer are jointly liable with the seller of the real estate to the purchaser for the performance of their respective warranty responsibilities.

*Sec. 15. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, Sec. 18, eff. Sept. 1, 1979.*

*Sec. 16. Repealed by Acts 1995, 74th Leg., ch. 978, § 25(1), eff. Sept. 1, 1995.*

## **PENALTIES, JUDICIAL REVIEW**

### **Section 17.**

- (a) A person, individual, or director, or officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a Class A misdemeanor and on conviction shall be fined not more than \$4,000 or shall be confined in the county jail not longer than one year or both.
- (b) In addition to the injunctive relief set forth in Section 18 of this Act, a person who fails to obtain or maintain a license as required by this Act may be assessed a civil penalty by the director payable to the state in an amount not to exceed \$10,000 for each violation of this Act in addition to the reasonable attorney's fees, court costs, witness fees, investigative costs, and deposition expenses.
- (c) Failure by a manufacturer, installer, or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this 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 as provided by that subchapter. As such, the venue provisions and all remedies available in that subchapter apply to and are cumulative of the remedies in this Act. However, notwithstanding any provisions of law to the contrary, a lawsuit containing allegations that the manufacturer, installer, or retailer failed to perform warranty obligations or failed to comply with any written or implied warranties shall be abated, provided that a plea in abatement is filed with the court not more than 45 days following the answer date of movant, if the manufacturer, installer, or retailer requests a consumer complaint inspection pursuant to the provisions of Section 14 of this Act. The abatement shall continue until the department has performed a consumer complaint inspection and the retailer, manufacturer, or both, or the installer, has been given an opportunity to comply with the inspection report, determinations, and orders of the director; however, the abatement shall not be granted for a period in excess of 150 days. A consumer's refusal to allow the manufacturer, installer, or retailer to perform warranty service pursuant to the inspection report, determinations, or orders of the director is a bar to any cause of action relating to alleged failure to comply with any written or implied warranties or perform warranty service.
- (d) Judicial review of an order, decision, or determination of the director shall be instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

## MISCELLANEOUS PROVISIONS

### Section 18.

- (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.
- (b) The provisions of all laws, parts of laws, ordinances, rules or regulations which are in conflict with any of the provisions of this Act are superseded 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 Act is a valid disclaimer of any implied warranties of fitness for a particular purpose 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 Act is a deceptive trade practice in addition to those set forth in Section 17.50, Business and Commerce Code.
- (c) If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This Act shall be liberally construed in its entirety to accomplish the purposes set forth in Section 2 of this Act.
- (d) If a retailer, broker, or installer does not possess a valid license 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 unlicensed manufacturer in violation of Section 6, Subsection (h) of this Act.
- (e) Nothing in this Act shall be construed to modify or amend any provisions of The Real Estate License Act, as amended (Act 6573a, Vernon's Texas Civil Statutes). The provisions of this Act, as amended, shall not apply to a person licensed as a real estate broker or salesperson pursuant to The Real Estate License Act, as amended (Act 6573a, Vernon's Texas Civil Statutes), who, as agent of the buyer or seller, negotiates the sale or lease of a manufactured home and the real property to which it is affixed, provided that the ownership of the manufactured 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 licensed retailer or licensed 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 Texas Department of Transportation pursuant to Subchapter E, Chapter 623, Transportation Code. The department shall cooperate with the Texas Department of Transportation by providing current lists of licensed manufactured housing manufacturers, retailer, and installers.

- (g) A local governmental unit or home-rule city may not require any permit, fee, bond, or insurance for the transportation and installation of manufactured housing by a licensed retailer or installer except as may be approved by the department. This subsection does not prohibit the collection of actual costs incurred by a local governmental unit or home-rule city that result from the transportation of a manufactured home.
- (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 canceled, the manufactured home shall be returned to the holder.
- (j) A licensed retailer is a "warehouseman" as defined by Section 7.102, Business & Commerce Code, for the storage of manufactured homes for hire. The provisions of the Business & Commerce Code relating to the storage of goods for hire apply to the licensed retailer acting as a warehouseman.

## **MANUFACTURED HOME TITLES**

### **Section 19.**

- (a) In this section:

*(Sec. 19(a)(1) amended by Acts 1999, 76th Leg., ch. 414, §2.44, eff. July 1, 2001)*

- (1) "Debtor" has the same meaning as given it by Section 9.102, Business & Commerce Code.
- (2) "Document of Title" means a written instrument issued solely by and under the authority of the director that sets forth:
  - (A) the name and address of the purchaser and seller at the first retail sale, or the transferee and transferor at any subsequent sale or transfer.

- (B) the manufacturer's name and address and, if any, the model designation;
  - (C) in accordance with applicable rules of the director, the outside dimensions of the manufactured home when installed for occupancy exclusive of the tongue or other towing device as measured to the nearest one-half of one foot at the base of the home, and the approximate square footage of the home when installed for occupancy;
  - (D) the identification number or numbers for each section or module of the manufactured home;
  - (E) the county of this state in which the manufactured home is installed for occupancy;
  - (F) the dates of any liens, and the names and addresses of the lienholders, in chronological order of recordation, and if no liens are registered or recorded on the manufactured home, a statement of that fact;
  - (G) the signature of the owner signed with pen and ink on receipt of the certificate;
  - (H) that if two or more eligible persons, as determined by Subsections (x) and (y) of this section, file with the application for document of title an agreement signed by all the persons providing that the manufactured home is to be held jointly with rights of survivorship, the director shall issue the document of title in all the names; and
  - (I) any other data the director requires.
- (3) "First retail sale" means the initial acquisition by a consumer of a new manufactured home by purchase, exchange, or lease-purchase from a retailer and includes a bargain, sale, transfer, or delivery with intent to pass an interest other than a lien, to a manufactured home for which a document of title has not been previously issued by the director.
- (4) "Identification number" means the permanent number affixed to, or imprinted on, a manufactured home or section of the home as prescribed by the rules of the department.

***(Sec. 19(a)(5) amended by Acts 1999, 76th Leg., ch. 414, §2.44, eff. July 1, 2001)***

- (5) "Inventory" has the meaning given it by Section 9.102, Business & Commerce Code, as amended.
- (6) "Lien" means a security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement of whatever kind or character if an interest, other than an

absolute title, is sought to be held or given in a manufactured home, and any lien on a manufactured home that is created or given by the constitution or a statute.

- (7) "Manufacturer's certificate" means a document, or a form prescribed by the director, that shows the original transfer of a manufactured home from the manufacturer to the retailer, and if presented with an application for a document of title, the certificate must show, on a form prescribed by the director, each subsequent transfer between retailers and retailer to owner.
- (8) "Mortgagee" means a secured party or any other person who holds a lien on a manufactured home.
- (9) "Mortgagor" means a debtor or other person who gives a lien on a manufactured home, any person who agrees that a lien may be retained on the home or any part of it, or any person against whom a lien arises under the constitution or a statute.

*(Sec. 19(a)(10) amended by Acts 1999, 76th Leg., ch. 414, §2.44, eff. July 1, 2001)*

- (10) "Secured party" has the meaning given it by Section 9.102, Business & Commerce Code.
- (11) "Security interest" has the meaning given it by Section 1.201(37), Business & Commerce Code.

*(Sec. 19(a)(12) amended by Acts 1999, 76th Leg., ch. 414, §2.44, eff. July 1, 2001)*

- (12) "Security agreement" has the meaning given it by Section 9.102, Business & Commerce Code.
  - (13) "Subsequent sale" means a bargain, sale, transfer, or delivery with intent to pass an interest, other than a lien, to a manufactured home from person to another person subsequent to the first retail sale and initial issuance of a document of title.
- (b) The director shall prescribe forms and adopt rules relating to manufacturer's certificates, to applications for documents of title, and to the issue of documents of title at the first retail sale and for each subsequent sale or transfer of a manufactured home.
  - (c) 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.
  - (d) The department may not refuse to issue a document of title, and may not suspend or revoke a document of title, unless:

- (1) the application contains any false or fraudulent statement, the applicant has failed to furnish information required by the director, or the applicant is not lawfully entitled to the issuance of a document of title;
  - (2) the director 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;
  - (3) the director has reasonable basis to believe that the manufactured home is "salvaged" as defined in Section 8 of this Act and a salvage title has not been applied for;
  - (4) the required fee has not been paid,
  - (5) 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 Subsection (j) of this section; or
  - (6) a local tax lien was filed before September 1, 2001, and recorded pursuant to Section 32.015, Tax Code, as that section existed on the date the lien was filed, and that lien has not been extinguished.
- (e) If the director 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 director is a contested case under Chapter 2001, Government Code. Notice of the appeal and request for hearing must be filed with the director within 30 days following notice of the director's action.
- (f) If there are no liens registered or recorded, the department shall issue a document of title marked "ORIGINAL" on its face and shall send the original by first class mail to the purchaser or transferee at the address on the application. If a lien is shown in the application or recorded with the department, the department shall issue a document of title marked "ORIGINAL" on its face and send the original by first class mail to the first lienholder. The department shall mail, first class, a copy of the document of title conspicuously marked "NON-TRANSFERABLE COPY" on its face to the purchaser or transferee and any other lienholder at the address shown on the application.
- (g) The owner designated in the original document of title must transfer the title on a form prescribed by the director and must file the form with the department before a manufactured home may be conveyed, transferred, or otherwise disposed of at a subsequent sale. The form must include any information the director requires and must include a statement that the person signing is the owner of the manufactured home and that there are no liens on the home except a lien shown on the document of title. If an original document of title is unavailable because a previous owner or lienholder, or both, cannot be located or because a home has been abandoned, a person may apply to the department for a replacement title by presenting evidence satisfactory to the department that efforts to locate the previous owner or lienholder, or both, have been unsuccessful

and an affidavit stating that to the best of the applicant's knowledge, the applicant is entitled to have a good and marketable title to the manufactured home. A title to a manufactured home may not pass or vest at a subsequent sale until the transfer is executed as provided by this section and an application for the issuance of a new document of title is sent to the department.

- (h) When the ownership of a manufactured home in this state is transferred by operation of law, as in an inheritance, a devise, or a bequest, bankruptcy, receivership, judicial sale, or any involuntary divestiture of ownership, the department shall issue a new document of title when the department is provided with a certified copy of the order or bill of sale from an officer making a judicial sale, or the order appointing a temporary administrator, the probate proceedings, the letters testamentary, the letters of administration, or an affidavit by all of the heirs at law showing that no administration is necessary and showing in whose name the certificate should be issued. If a security interest or other lien is foreclosed in accordance with law by nonjudicial means and the secured party or other mortgagee files an affidavit with the department showing the nonjudicial foreclosure in accordance with law, the department may issue a new document of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien and the person entitled to the lien files an affidavit showing the creation of the lien and of the divestiture of title because of the lien in accordance with law, the department may issue a new document of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by two or more eligible persons, as determined by Subsections (x) and (y) of this section, and if on the death of one of the persons the department is provided with a copy of the death certificate of the deceased person, the department shall issue a new document of title to the surviving person or persons.
- (i) If an original document of title is lost or destroyed, the owner or lienholder may obtain a certified copy of the original from the department by making an affidavit on a form prescribed by the director. The department shall issue the certified copy only to the first lienholder if a lien is disclosed on the original. The certified copy shall be conspicuously marked "CERTIFIED COPY OF ORIGINAL" on its face. If the original is recovered, the owner or lienholder shall immediately surrender the original to the department with the certified copy of the original document of title, and the department shall issue a new original document of title.
- (j) The department may not issue titles to new 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.
- (k) A lien on the manufactured homes in the inventory is perfected by filing a security agreement with the department in a form that contains the information the director requires. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds of the sale of those homes. Failure to pay or satisfy any inventory lien filed and recorded against a manufactured home pursuant to the terms of the security agreement by the retailer is sufficient cause to revoke or suspend the retailer's license with the department.

*(Sec. 19(l) amended by Acts 2001, 77th Leg., HB 3552, eff. Sept. 1, 2001)*

- (1) If a manufactured home is permanently affixed to real estate, the manufacturer's certificate or the original document of title may be surrendered to the department for cancellation. The legal description or the appropriate tract or parcel number of the real estate must be given to the department when the certificate or document of title is surrendered. If a notice of attachment is to be filed, a copy of the notice must be submitted with the manufacturer's certificate or the original document of title surrendered for cancellation. The director may require the filing of other information. The department may not cancel a manufacturer's certificate or a document of title if a lien has been registered or recorded on the manufactured home. If a lien has been registered or recorded, the department shall notify the owner and each lienholder that the title and a description of the lien have been surrendered to the department and that the department may not cancel the title until the lien is released. Permanent attachment to real estate does not affect the validity of a lien recorded or registered with the department before the manufactured home is permanently attached. The rights of a prior lienholder pursuant to a security agreement or the provisions of a credit transaction and the rights of the state pursuant to a tax lien are preserved. The department shall issue a certificate of attachment to real estate to the person who surrenders the manufacturer's certificate or document of title. The certificate or document must contain the legal description or the appropriate tract or parcel number of the real estate and the identification number of the home, and must certify that the manufacturer's certificate or original document of title has been canceled. Before the issuance of a certificate of attachment, a person who surrenders the manufacturer's certificate or the original document of title to the department may file a notice of attachment in the real property records of the county in which the home is located. The notice must state that the manufacturer's certificate or the original document of title has been surrendered for cancellation and a request has been made for the issuance of a certificate of attachment. The notice must include information sufficient to identify the home and must contain the legal description or the appropriate tract or parcel number of the real property on which the home is located. The notice is valid for all purposes until the certificate of attachment is issued and filed in the real property records of the appropriate county.

*(Sec. 19(l) amended by Acts 2001, 77th Leg., HB 1869, eff. Jan. 1, 2002)*

- (1) If a manufactured home is permanently affixed or becomes an improvement to real estate, the manufacturer's certificate or the original document of title shall be surrendered to the department for cancellation. This requirement does not apply to an owner who is not issued a title under Section 2.001(e) or (f), Property Code. The legal description or the appropriate tract or parcel number of the real estate must be given to the department when the certificate or document of title is surrendered. The director may require the filing of other information. The department may not cancel a manufacturer's certificate or a document of title if a lien has been registered or recorded on the manufactured home. If a lien has been registered or recorded, the department shall notify the owner and each lienholder that the title and a description of the lien have been surrendered to the department and that the department may not cancel the title until the lien is released. Permanent attachment to real estate does not affect the validity of a lien recorded or registered with the department before the manufactured home is permanently attached.

The rights of a prior lienholder pursuant to a security agreement or the provisions of a credit transaction and the rights of the state pursuant to a tax lien are preserved. The department shall issue a certificate of attachment to real estate to the person who surrenders the manufacturer's certificate or document of title. The certificate of attachment must contain the legal description or the appropriate tract or parcel number of the real estate and the identification number of the home, and must certify that the manufacturer's certificate or original document of title has been canceled. Before the issuance of a certificate of attachment, a title insurance company authorized to do business in this state which surrenders the manufacturer's certificate or the original document of title to the department shall file a notice of improvement attachment in the real property records of the county in which the home is located. The notice must state that the manufacturer's certificate or the original document of title has been surrendered for cancellation and a request has been made for the issuance of a certificate of attachment. The notice must include information sufficient to identify the home and must contain the legal description or the appropriate tract or parcel number of the real property on which the home is located. The notice is valid for all purposes until the certificate of attachment is issued and filed in the real property records of the appropriate county.

- (m) The registration and recordation of a lien with the department is notice to all persons that the lien exists. Liens recorded or registered with the department have priority, in the chronological order of recordation, over other liens or claims against the manufactured home, other than as expressly provided by Chapter 32, Tax Code.

*(Sec. 19(n) amended by Acts 1999, 76th Leg., ch. 414, § 2.45, eff. July 1, 2001)*

- (n) Notwithstanding any other provisions of this section, the filing of a security agreement by a secured party perfecting a lien in the inventory of a retailer may not prevent a buyer in the ordinary course of business as defined by Sections 1.201(9) and 9.320(a), Business & Commerce Code, from acquiring good title free and clear of such interest, and the department may not consider such security interest as a lien for the purpose of title issuance.

- (o)
  - (1) The department shall furnish each county tax assessor-collector in this state a monthly report that lists:
    - (A) the name of the owner of each manufactured home installed in the county during the preceding month;
    - (B) the name of the manufacturer of the manufactured home;
    - (C) the model designation of the manufactured home;
    - (D) the identification number of each section or module of the manufactured home;
    - (E) the address or location where the manufactured home is installed; and

- (F) the date of the installation of the manufactured home.
- (2) 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 month.
- (3) The director 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.
- (p) This Act supersedes any conflicting provisions of the Business & Commerce code otherwise, the provisions of the Business & Commerce Code apply to transaction relating to manufactured housing.
- (q) A certificate of title to a manufactured home issued pursuant to the Certificate of Title Act, as amended (Act 6687-1, Vernon's Texas Civil Statutes), before March 1, 1982, is subject to this Act. A lien registered or recorded with the Texas Department of Transportation or a predecessor agency of that department before March 1, 1982, for the purposes of this Act is registered or recorded with the department.
- (r) Each month the Texas Department of Transportation shall send the department either a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways or a list of the permits issued and the information on the permits. The department shall pay the reasonable cost of providing the copies or the list and information.
- (s) The director shall adopt rules consistent with this Act for the titling of a manufactured home that has been previously registered or titled in this state or any other state. The rules must protect a lienholder recorded on a certificate or document of title.
- (t) The board shall set fees for issuing and canceling titles to manufactured housing. The fees shall include \$10 for each title transaction which shall be deposited in a special account to be known as the manufactured homeowners' recovery fund and used for the purposes established under Section 13A of this Act. The balance of the fee for each title transaction is hereby appropriated, and reappropriated, to the department in addition to its general appropriation to be used exclusively for enforcement of this Act.
- (u) The department shall print on every document of title issued under this section a notice that the document of title may not reflect the existence of a tax lien notice filed for the manufactured home since the document of title was issued and that information about tax liens for which notice has been filed may be obtained from the department on written request.
- (v) On the written request of a person containing the name of the owner of a manufactured home having a document of title or the identification number of a manufactured home, the department shall furnish information held by the department on the current ownership of the manufactured home and the existence of any tax liens on the manufactured home for which notice has been filed with the department.

- (w) 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 Act, and may issue new titles if the new home is rebuilt pursuant to the rules and regulations of the director.
- (x) A person is eligible to sign a rights of survivorship agreement under this section if the person:
  - (1) is married and the spouse of the signing person is the only other party to the agreement;
  - (2) is unmarried and attests to that unmarried status by affidavit; or
  - (3) is married and provides the department with an affidavit from the signing person's spouse that attests that the signing person's interest in the manufactured home is the signing person's separate property.
- (y) If the title is being issued in connection with the sale of the manufactured home, the seller is not eligible to sign a rights of survivorship agreement under this section unless the seller is the child, grandchild, parent, grandparent, brother, or sister of each other person signing the agreement. A family relationship required by this subsection may be a relationship established by adoption.

*(Sec. 19A added by Acts 2001, 77th Leg., HB 1869, eff. Jan. 1, 2002)*

## **CERTAIN MANUFACTURED HOMES CONSIDERED REAL PROPERTY**

### **Section 19A.**

- (a) A manufactured home that is permanently attached to real property is classified and taxed as real property if the real property to which the home is attached is titled in the name of the consumer under a deed or contract for sale. A manufactured home is considered permanently attached to real property if the home is secured to a foundation and connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater services.
- (b) The closing of a transaction for the acquisition of a manufactured home considered to be real property under this section must occur at the office of a federally insured financial institution, a title company, or an attorney at law. If the real property is purchased under a contract of sale, the contract must be filed in the real property records of the county in which the home is installed.
- (c) Installation of a manufactured home considered to be real property under this section must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for

FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

- (d) A civil action to enjoin a violation of this section may be brought by a purchaser in the county where the violation occurs or by the county where the violation occurs.
- (e) A manufactured home permanently attached to real property before January 1, 2002, or placed in a manufactured home rental community as defined by Section 232.007, Local Government Code, is not subject to this section.
- (f) This section does not require a retailer or retailer's agent to obtain a license under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).

### **NOTICE TO CONSUMERS BEFORE TITLE TRANSFER**

#### **Section 20.**

- (a) A retailer or manufacturer shall not transfer title to a HUD-Code manufactured home nor otherwise sell, assign or convey a HUD-Code manufactured home to a consumer without delivering the formaldehyde health notice required by this section subject to applicable rules of the director. The notice shall be delivered to the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.
- (b) The content of the notice shall be the same as required by the U.S. Department of Housing and Urban Development and of such type, size, and format as prescribed by the director. A retailer or manufacturer shall not vary the provisions or form of the notice; it is sufficient and adequate, as a matter of law, to advise consumers of the risks of occupying the home. The consumer's written acknowledge of receipt of the notice is conclusive proof of the delivery of the notice and the posting of the notice in compliance with federal regulations.
- (c) The knowing and willful failure of a retailer or a manufacturer to comply with the applicable regulations of the U.S. Department of Housing and Urban Development and of the director is conclusive that such person breached the duty to notify the consumer about formaldehyde and that the home is not habitable; compliance with such applicable regulations by a retailer or a manufacturer is conclusive that the consumer received sufficient and adequate notice of the risks of occupying the home and that the home is habitable as regards formaldehyde emissions.
- (d) The knowing and willful failure of a retailer or a manufacturer, from September 1, 1981, to September 1, 1985, to comply with the applicable provisions of this section and the revised formaldehyde warning as promulgated by the department continues to be conclusive that such person breached the duty to notify the consumer about formaldehyde and that the home is not habitable; compliance, from September 1, 1981, to September 1, 1985, with the applicable provisions of this section and the revised formaldehyde warning as promulgated by the department continues to be conclusive that the consumer received sufficient and adequate notice of the risks of occupying the home and that the home is habitable as regards formaldehyde emissions.

*(Sec. 21 added by Acts 2001, 77th Leg., HB 1869, eff. Jan. 1, 2002)*

## **DISCLOSURE BY RETAILER AND LENDER**

### **Section 21.**

- (a) Prior to the completion of a credit application, the retailer or agent must provide to the consumer the following statement that is printed in at least 10-point type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

**"ZONING AND RESTRICTIVE COVENANTS.** Some municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

**"WATER.** Not all lots have immediate access to water lines. You may have to drill a well. Be sure that your lot has access to water. If you must drill a well, contact several drillers for bids. If water is provided by a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay.

**"SEWER.** If your lot is not serviced by a municipal sewer system or utility district, you may have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a private installer to determine the requirements that apply to your lot and the cost to install such a system.

**"HOMEOWNER ASSOCIATION FEES.** Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

**"TAXES.** In Texas, real property is taxed annually based on its market value. Attaching a manufactured home to a lot improves the lot's value and will increase the taxes assessed on the lot. You are liable for the payment of all ad valorem taxes assessed against your home by the municipality, county, school district, and other tax authorities (utility district, community college, etc.). As with other residential structures, the applicable tax rate will apply to the market value of the home. You should contact the local chief appraiser or the county tax assessor-collector for specific tax information.

They will need to know the price you paid for, and the specific location of, the home. If the manufactured home is your principal place of residence, you should be able to claim a HOMESTEAD EXEMPTION. You should also make certain that the lot or land you are purchasing is not subject to any rollback tax liability because of the change in use of the property."

- (b) A retailer may not transfer title to a manufactured home or otherwise sell, assign, or convey a manufactured home to a consumer unless the retailer delivers to the consumer a written document disclosing:
  - (1) the total purchase price of the manufactured home, as adjusted for:
    - (A) any agreed interest rate and any points or fees; and
    - (B) the length of time for any loan repayment; and
  - (2) regardless of whether the real property proposed as the site for the manufactured home has been sold through an executory contract for conveyance, any responsibility of the consumer to:
    - (A) pay property taxes associated with the manufactured home;
    - (B) maintain private roads proximate to the manufactured home's location;
    - (C) maintain a contract for an on-site sewage disposal system;
    - (D) obtain property damage insurance; and
    - (E) obtain mortgage insurance.
- (c) If the information is available, a person making a loan to a consumer to fund acquisition of a manufactured home shall also make the disclosures described by Subsection (b) before the consumer signs documents relating to the closing of the loan.
- (d) A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.
- (e) Failure to comply with the disclosure provisions of this section does not affect the validity of a conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position.