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BILL



ANALYSIS

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Senate Bill 425 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Michael D. Bishop  
Committee: Banking and Financial Institutions

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### **RATIONALE**

A January 2003 decision of the United States Court of Appeals for the Sixth Circuit has clarified the way in which a security interest in a mobile home affixed to real property must be created and enforced (*In re: Damon J. and Regina M. Kroskie*, Docket No. 02-1008). Under the Mobile Home Commission Act (MHCA), mobile home owners are required to obtain a certificate of title from the Mobile Home Code Commission in the Department of Consumer and Industry Services. If a mobile home owner creates a security interest in the mobile home (e.g., obtains a loan secured by the home), the Act requires the owner to deliver the certificate of title to the creditor, who then "perfects" its security interest by filing the certificate with the Commission. This gives the creditor priority over other creditors of the mobile home owner who also obtain an interest in the home.

Despite these requirements, for a number of years, mobile homes affixed to real property (e.g., attached to a foundation) have been treated as other "fixtures" to real property for purposes of financing and the perfection of security interests. That is, buyers or owners obtained mortgages in the homes, and mortgage companies perfected their security interest by recording a mortgage with a register of deeds. The U.S. Court of Appeals ruled, however, that the MHCA provides the exclusive method of perfecting a security interest in a mobile home, including a home affixed to real property. This means that a creditor must perfect a security interest by filing a certificate of title with the Mobile Home Code Commission, rather than recording a mortgage with the register of deeds.

This decision has raised concerns among realtors and others. Because security interests in affixed mobile homes will not be

recorded, a potential lender will not be able to conduct a title search in order to discover security interests in a home. In addition, if a creditor fails to perfect its security interest by filing a certificate of title with the Commission, that creditor's lien may not be enforceable against another creditor who has a security interest in the mobile home. As a result, lenders reportedly have discontinued making mortgage loans for the purchase or refinancing of mobile homes affixed to real property, meaning borrowers must pay the higher interest rate charged for a personal property loan.

In order to provide more affordable financing for mobile homes affixed to real estate, and to enable the holder of a lien or security interest in both a mobile home and land to enforce the lien or interest in the way other real property liens are enforced, some people believe that the MHCA's provisions for enforcing a security interest in a mobile home should not apply to mobile homes affixed to real property. (Please see **BACKGROUND** for further information about the *Kroskie* case.)

### **CONTENT**

**The bill would amend the Mobile Home Commission Act to provide for the cancellation of certificates of title to mobile homes affixed to real property, and allow the homes to be conveyed only as part of the real property. The bill would do all of the following:**

**-- Require the owner of a mobile home that was affixed to his or her real property to deliver to the Department of Consumer and Industry Services (DCIS) a certificate of title for the home as well as an affidavit containing**

**information about it and, if applicable, the consent of each holder of a security interest in the home to the termination of the security interest.**

- Require the DCIS to cancel the certificate of title, and prohibit the Department from issuing a certificate of title for the mobile home, unless it was detached from the property.**
- Provide that, when the DCIS received the owner's affidavit, any security interest in the home would be terminated, the Act's provisions for titling and security interests would not apply, and the home would be considered part of the real property and could be conveyed only as part of the property, unless it was detached.**
- Require the owner to deliver a copy of the affidavit to the county register of deeds for recording.**
- Allow the mobile home owner to detach the home from the real property by filing an affidavit of detachment and applying for a certificate of title.**
- Provide that, if a mobile home were affixed to real property before the bill's effective date, the holder of a lien or security interest in both the home and the real property could enforce the lien or security interest by accepting a deed in lieu of foreclosure or as provided by law for enforcing liens on real property.**

Specifically, if a mobile home were affixed to real property in which an owner of the mobile home had an ownership interest, the owner would have to deliver to the DCIS the certificate of title for the mobile home, or the manufacturer's certificate of origin if the Department had not issued a certificate of title. The owner also would have to deliver an affidavit of affixture on a form provided by the DCIS that contained all of the following:

- The owner's name and address.
- A description of the mobile home that included the manufacturer's name, the year of manufacture, the model, and the manufacturer's serial number or the number assigned by the DCIS.
- A statement that the mobile home was affixed to the real property.
- The legal description of the real property.
- The name of each holder of a security interest in the mobile home, together with the written consent of each holder to the

termination of the security interest and the cancellation of the certificate of title, if applicable.

When the DCIS received the affidavit and certificate of title, it would have to cancel the certificate of title. The Department could not issue a certificate of title for the mobile home, except as provided in the bill for a mobile home that the owner intended to detach from his or her real property. The DCIS would have to maintain the affidavit for 30 years after the date of filing.

The mobile home owner would have to deliver a duplicate original of the executed affidavit to the register of deeds of the county in which the real property was located. The register of deeds would have to record the affidavit.

When the DCIS received the affidavit, all of the following would apply:

- The mobile home would be considered part of the real property.
- Sections 30 to 30h of the Act (which pertain to the titling of, and security interest in, mobile homes) would not apply to that mobile home.
- Any security interest in the mobile home would be terminated.
- A lien holder could perfect and enforce a new security interest or lien on the mobile home only in the manner provided by law for perfecting and enforcing a lien on real property.
- The owner could convey the mobile home only as part of the real property to which it was affixed.

If a mobile home were affixed to real property before the bill's effective date, the holder of a lien or security interest in both the mobile home and the real property could enforce its lien or security interest by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real property. If the holder of a lien or security interest became the owner of a mobile home affixed to real property through the process of real property foreclosure or through a deed in lieu of foreclosure, the holder would have to submit an affidavit of affixture to the DCIS after the redemption period for the foreclosure expired, or the deed in lieu of foreclosure was recorded, and the Department canceled the mobile home's certificate of title.

If an owner of both a mobile home and the real property to which it was affixed intended to detach the mobile home from the real property, the owner first would have to record an affidavit of detachment in the office of the register of deeds in the county in which the owner's duplicate original affidavit was recorded. The owner also would have to apply for a certificate of title for the mobile home on a form prescribed by the DCIS. The application would have to include a duplicate original executed affidavit of detachment and proof that there were no security interests or liens on the mobile home, or the written consent of each lien holder of record to the detachment.

An owner of an affixed mobile home could not detach it from the real property before the DCIS issued a certificate of title for the home. If the Department issued a certificate of title, the mobile home would no longer be considered an improvement to real property and Sections 30 to 30h would apply.

Under the bill, a mobile home would be considered "affixed" to real property if the wheels, towing hitches, or running gear were permanently removed and the mobile home were attached to a foundation or other support system.

"Ownership interest" would mean the fee simple interest in real property or an interest as the lessee under a ground lease for the real property that had a term that continued for at least 20 years after the register of deeds recorded the owner's affidavit.

Proposed MCL 125.2330i

## **BACKGROUND**

*In re: Damon J. and Regina M. Kroskie* involved the bankruptcy of the Kroskies, who owned a mobile home located on their own land. In January 1999, they refinanced their real estate and mobile home by borrowing \$80,000 from R-B Financial Mortgages, Inc., which secured the debt by recording a traditional mortgage with the Wexford County register of deeds. The mortgage was assigned to Chase Manhattan Mortgage Corporation. In November 1999, the Kroskies filed for Chapter 7 bankruptcy.

The bankruptcy trustee filed a motion for summary judgment to avoid Chase Manhattan's purported lien on the mobile

home, and the United States Bankruptcy Court for the Western District of Michigan granted the motion. The U.S. District Court for the Western District of Michigan reversed that judgment. On further appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the judgment of the Bankruptcy Court.

The mobile home in question sat on a cement block foundation on the Kroskie's land and was connected to electrical lines, a private well, and a septic system. The parties agreed that the home was legally a fixture to the real estate. The Bankruptcy Court held that Chase Manhattan was an unsecured creditor with regard to the Kroskie's mobile home, because the MHCA "provides the exclusive method for perfecting a security interest in mobile homes", and neither R-B Financial nor Chase Manhattan had filed anything with the Mobile Home Code Commission.

According to the U.S. Court of Appeals for the Sixth Circuit, recording a mortgage with the county register of deeds, as Chase Manhattan had done, would perfect its interest in all fixtures on the land in question under general real property principles. Under the MHCA, however, "a security interest in a mobile home may only be perfected by filing an application with the Mobile Home Commission".

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Since 1979, mobile homes affixed to real property evidently have been sold and financed in the same way as a house situated on real property and title insurers have treated affixed mobile homes the same as houses. A creditor's security interest in a mobile home has been asserted through the filing of a mortgage on that real estate. As a result of the U.S. Sixth Circuit Court's *Kroskie* decision, however, this practice has changed dramatically. Because the Court agreed with the Bankruptcy Court that "Michigan's Mobile Home Commission Act...provides the exclusive method for perfecting a security interest in mobile homes", a mortgage lender cannot perfect a security interest in a mobile home by recording a mortgage on real property with the county register of deeds. If the lender attempts to do so, the security interest will be

unenforceable against other creditors who file with the Commission. As a result, secondary mortgage lenders reportedly have stopped buying mobile home mortgages from financial institutions and mortgage companies. Those lenders, in turn, have stopped offering mortgage loans and refinancing to owners of mobile homes situated on their own real property.

The *Kroskie* decision, then, not only leaves creditors unable to enforce mortgage loans made on such mobile homes, but renders low-interest mortgage loans for the purchase or refinancing of affixed mobile homes unavailable to consumers. Those borrowers instead have to secure higher-interest personal property loans for their mobile homes.

The bill would require the cancellation of a certificate of title on a mobile home affixed to real property, provide that the MHCA's titling and security interest provisions would not apply to that mobile home, and allow the home to be conveyed only as part of the real property. This would allow a creditor to perfect its security interest in the home, together with the real property to which the home was affixed, by filing a mortgage with the register of deeds for recording, just as mortgage lenders in Michigan apparently had done for over 20 years. Lenders, and buyers of mortgages on the secondary market, in turn should resume offering mortgage loans for mobile homes affixed to real property. Thus, the bill would benefit both lenders, by opening up a market that essentially was closed off after the *Kroskie* decision, and borrowers, who could obtain more affordable financing for their mobile homes.

**Response:** The bill should be made retroactive, rendering the *Kroskie* decision moot and enabling mortgage lenders, who thought they had a perfected security interest in affixed mobile homes, to enforce that interest.

### **Opposing Argument**

The bill does not go far enough. It would apply only to a mobile home affixed to real property in which the mobile home owner has an ownership interest. Most opportunities for purchasing a mobile home, however, are in mobile home communities in which the home owner rents a lot from the developer or other land owner. People who wish to buy or refinance mobile homes in these more traditional settings also should have the

benefit of lower-cost mortgage loans. Titling and security interest provisions that allow for affordable home ownership should apply to all mobile homes.

**Response:** The bill would reinstate the titling and financing practices that existed in Michigan before the *Kroskie* decision. Mobile homes situated in a traditional mobile home park were never treated the same as homes built on real property. Unless a mobile home is a fixture on the owner's real property, it should continue to be treated legally as personal property, such as a car or a boat.

In addition, according to testimony before the Senate Committee on Banking and Financial Institutions, developers increasingly are building manufactured home subdivisions, rather than traditional trailer parks, in which the buyer purchases both the home and the land on which it is situated. In those instances, the bill would help home buyers to secure lower-interest mortgage loans.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.