

BILL ANALYSIS

C.S.H.B. 3489

By: Flores

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Appraiser Licensing and Certification Board (TALCB) lacks authority over individuals performing unlicensed appraisal services. Individual licenses and certificates automatically expire, requiring licensees to repeat the application process. C.S.H.B. 3489 authorizes TALCB to sanction those performing unlicensed appraisal services and provides for administrative, criminal, and civil penalties.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Appraiser Licensing and Certification Board in SECTION 2 (Section 1103.212, Occupations Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 1103.156(a), Occupations Code, to include an additional fee that the Texas Appraiser Licensing and Certification Board (TALCB) is authorized to establish to administer this chapter.

SECTION 2. Amends Chapter 1103E, Occupations Code, by adding Sections 1103.212 and 1103.213, as follows: Sec. 1103.212. EXTENSION OF TIME TO COMPLETE REQUIRED CONTINUING EDUCATION. (a) Authorizes TALCB by rule to establish procedures under which a person is authorized to obtain an extension of time to complete continuing education required to renew the person's certificate or license. (b) Authorizes TALCB to require a person under this section to meet certain requirements. (c) Requires a person to complete the required continuing education before performing an appraisal in a federally related transaction, notwithstanding the other provisions of this section. Sec. 1103.213. INACTIVE CERTIFICATE OR LICENSE. (a) Authorizes TALCB to place on inactive status the certificate or license of an appraiser if the appraiser is not acting as an appraiser, is not sponsoring an appraiser trainee, and submits a written application to TALCB before the expiration date of the appraiser's certificate or license. (b) Authorizes TALCB to place on inactive status the certificate or license of an appraiser whose certificate or license has expired if the appraiser applies for inactive status on a form prescribed by TALCB not later than the first anniversary of the expiration date of the appraiser's certificate or license. (c) Requires an appraiser applying for inactive status to terminate the appraiser's association with each appraiser trainee sponsored by the appraiser by giving written notice to each appraiser trainee before the 30th day preceding the date the appraiser applies for inactive status. (d) Provides that an appraiser on inactive status is prohibited from performing any activity regulated under this chapter, is required to pay annual renewal fees, and is not required to pay the annual registry fee described by Section 1103.156(b). (e) Requires TALCB to maintain a list of each appraiser whose certificate or license is on inactive status. (f) Requires TALCB to remove an appraiser's certificate or license from inactive status if the appraiser submits an application to TALCB, pays the required fee and submits proof of complying with the continuing education requirements of Section 1103.211 during the two years preceding the date the application under Subdivision (1) is filed.

SECTION 3. Amends Section 1103.451, Occupations Code, by adding Subsection (d), as follows:

(d) Authorizes TALCB, on its own motion, to file a formal complaint against a person who engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license. Provides that this subchapter and Subchapter K apply to a complaint filed under this subsection in the same manner as they apply to a complaint filed under Subsection (b).

SECTION 4. Amends Section 1103.551(a), Occupations Code, to authorize TALCB to institute an action in its own name against any person, including a person who is not certified or licensed under this chapter, to enjoin a violation of this chapter or a rule adopted by TALCB under this chapter.

SECTION 5. Amends Section 1103.552(b), Occupations Code, to replace the word "appraiser" with "person."

SECTION 6. Amends the heading to Section 1103.553, Occupations Code, to read as follows: Sec. 1103.553. CIVIL PENALTY FOR FILING FRIVOLOUS COMPLAINT.

SECTION 7. Amends Chapter 1103L, Occupations Code, by adding Section 1103.5535, as follows: Sec. 1103.5535. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) Provides that a person who receives consideration for engaging in an activity for which a certificate or license is required under this chapter and who does not hold a certificate or license is liable for a civil penalty. (b) Prohibits the amount of a civil penalty imposed under this section from being less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received. (c) Authorizes the attorney general or a district or county attorney to bring an action in district court to recover a civil penalty under this section, at the request of TALCB. (d) Requires a civil penalty recovered in an action under this section to be deposited in the state treasury.

SECTION 8. Amends the heading to Section 1103.554, Occupations Code, to read as follows: Sec. 1103.554. CRIMINAL PENALTY FOR MISREPRESENTING QUALIFICATIONS.

SECTION 9. Amends Chapter 1103L, Occupations Code, by adding Section 1103.5545, as follows: Sec. 1103.5545. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) Provides that a person commits an offense if the person engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license. (b) Provides that an offense under this section is a Class A misdemeanor.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by amending the relating clause to include administrative penalties.

Amends proposed Sections 1103.212 and 1103.213, as follows: Section 1103.212. Redesignated as Section 1103.213. Creates a new proposed Section 1103.212 which names and outlines an extension of time to complete required continuing education. Section 1103.213. Deletes proposed section.

SECTION 3. Redesignated as SECTION 4. Creates a new proposed SECTION 3 which amends Section 1103.451(d) that states the board may file a complaint against someone who engages in

certified or licensed activity under this chapter without being licensed or certified, on it's own motion.

SECTION 4. Redesignated as SECTION 6. Creates a new proposed SECTION 5 which amends Section 1103.552(b) which deletes reference to "appraiser", and adds "person".

SECTION 5. Redesignated as SECTION 7. Amends the heading to read "Civil Penalty for Engaging in Activity Without Required Certificate or License.

SECTION 6. Redesignated as SECTION 8.

SECTION 7. Redesignated as SECTION 9. Amends the heading to read "Criminal Penalty for Engaging in Activity Without Required Certificate or License."

SECTION 8. Redesignated as SECTION 10.