

By: Shapleigh

S.B. No. 914

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas Real Estate
3 Commission and the regulation of real estate brokers, salespersons,
4 inspectors, appraisers, residential service companies, and
5 timeshares; providing administrative penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 1101.006, Occupations Code, is amended
8 to read as follows:

9 Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real
10 Estate Commission is subject to Chapter 325, Government Code (Texas
11 Sunset Act). Unless continued in existence as provided by that
12 chapter, the commission is abolished and this chapter, ~~[and]~~
13 Chapter 1102, and Chapter 1303 of this code and Chapter 221,
14 Property Code, expire September 1, 2019 [~~2007~~].

15 SECTION 2. Section 1101.053, Occupations Code, is amended
16 to read as follows:

17 Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
18 In this section, "Texas trade association" means a [~~nonprofit,~~
19 cooperative~~]~~ and voluntarily joined statewide association of
20 business or professional competitors in this state designed to
21 assist its members and its industry or profession in dealing with
22 mutual business or professional problems and in promoting their
23 common interest.

24 (b) A person may not be a member of the commission and may

1 not be a commission employee employed in a "bona fide executive,
2 administrative, or professional capacity," as that phrase is used
3 for purposes of establishing an exemption to the overtime
4 provisions of the federal Fair Labor Standards Act of 1938 (29
5 U.S.C. Section 201 et seq.) if:

6 (1) the person is an officer, [~~A state elected~~
7 ~~president, president-elect, vice president, or~~
8 ~~secretary-treasurer,~~] employee, or paid consultant of a Texas trade
9 association in the real estate industry; or

10 (2) the person's spouse [~~may not be a commission member~~
11 ~~and may not be a commission employee who is exempt from the state's~~
12 ~~position classification plan or is compensated at or above the~~
13 ~~amount prescribed by the General Appropriations Act for step 1,~~
14 ~~salary group A17, of the position classification salary schedule.~~

15 [~~(c) A person who~~] is [~~the spouse of~~] an officer, manager,
16 or paid consultant of a Texas trade association in the real estate
17 industry [~~may not be a commission member and may not be a commission~~
18 ~~employee who is exempt from the state's position classification~~
19 ~~plan or is compensated at or above the amount prescribed by the~~
20 ~~General Appropriations Act for step 1, salary group A17, of the~~
21 ~~position classification salary schedule].~~

22 (c) [~~(d)~~] A person may not serve as a commission member or
23 act as the general counsel to the commission if the person is
24 required to register as a lobbyist under Chapter 305, Government
25 Code, because of the person's activities for compensation on behalf
26 of a profession related to the operation of the commission.

27 SECTION 3. Subsections (a) and (c), Section 1101.057,

1 Occupations Code, are amended to read as follows:

2 (a) It is a ground for removal from the commission that a
3 member:

4 (1) does not have at the time of appointment the
5 qualifications required by Section 1101.051(a) or (b) or 1101.052;

6 (2) does not maintain during service on the commission
7 the qualifications required by Section 1101.051(a) or (b) or
8 1101.052;

9 (3) is ineligible for membership under [~~violates a~~
10 ~~prohibition established by~~] Section 1101.053;

11 (4) cannot, because of illness or disability,
12 discharge the member's duties for a substantial part of the member's
13 term; or

14 (5) is absent from more than half of the regularly
15 scheduled commission meetings that the member is eligible to attend
16 during each calendar year, unless the absence is excused by
17 majority vote of the commission.

18 (c) If the administrator has knowledge that a potential
19 ground for removal [~~of a commission member~~] exists, the
20 administrator shall notify the presiding officer of the commission
21 of the potential ground. The presiding officer shall then notify
22 the governor and the attorney general that a potential ground for
23 removal exists. If the potential ground for removal involves the
24 presiding officer, the administrator shall notify the next highest
25 ranking officer of the commission, who shall then notify the
26 governor and the attorney general that a potential ground for
27 removal exists.

1 SECTION 4. Subchapter B, Chapter 1101, Occupations Code, is
2 amended by adding Section 1101.059 to read as follows:

3 Sec. 1101.059. TRAINING. (a) A person who is appointed to
4 and qualifies for office as a member of the commission may not vote,
5 deliberate, or be counted as a member in attendance at a meeting of
6 the commission until the person completes a training program that
7 complies with this section.

8 (b) The training program must provide the person with
9 information regarding:

10 (1) this chapter and other laws regulated by the
11 commission;

12 (2) the programs, functions, rules, and budget of the
13 commission;

14 (3) the results of the most recent formal audit of the
15 commission;

16 (4) the requirements of laws relating to open
17 meetings, public information, administrative procedure, and
18 conflicts of interest; and

19 (5) any applicable ethics policies adopted by the
20 commission or the Texas Ethics Commission.

21 (c) A person appointed to the commission is entitled to
22 reimbursement, as provided by the General Appropriations Act, for
23 the travel expenses incurred in attending the training program
24 regardless of whether the attendance at the program occurs before
25 or after the person qualifies for office.

26 SECTION 5. Subsection (a), Section 1101.101, Occupations
27 Code, is amended to read as follows:

1 (a) The commission shall ~~[may]~~ appoint an administrator.

2 SECTION 6. Section 1101.102, Occupations Code, is amended
3 to read as follows:

4 Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The
5 commission shall develop and implement policies that clearly
6 separate the policymaking ~~[define the respective]~~ responsibilities
7 of the commission and the management responsibilities of the
8 administrator and the ~~[commission]~~ staff of the commission.

9 SECTION 7. Subsections (a) and (b), Section 1101.152,
10 Occupations Code, are amended to read as follows:

11 (a) The commission shall adopt rules to charge and collect a
12 fee for ~~[the following fees]:~~

13 (1) ~~[for]~~ filing an original application for a broker
14 license~~[, not more than \$100];~~

15 (2) ~~[for]~~ annual renewal of a broker license~~[, not~~
16 ~~more than \$100];~~

17 (3) ~~[for]~~ filing an original application for a
18 salesperson license~~[, not more than \$75];~~

19 (4) ~~[for]~~ annual renewal of a salesperson license~~[, not~~
20 ~~more than \$50];~~

21 (5) ~~[for]~~ annual registration~~[, \$80];~~

22 (6) filing ~~[for]~~ an application for a license
23 examination~~[, not more than \$100];~~

24 (7) ~~[for]~~ filing a request for a branch office
25 license~~[, not more than \$20];~~

26 (8) ~~[for]~~ filing a request for a change of place of
27 business, change of name, return to active status, or change of

1 sponsoring broker [~~not more than \$20~~];

2 (9) [~~for~~] filing a request to replace a lost or
3 destroyed license or certificate of registration [~~not more than~~
4 ~~\$20~~];

5 (10) [~~for~~] filing an application for approval of an
6 education program under Subchapter G [~~not more than \$400~~];

7 (11) [~~for~~] annual operation of an education program
8 under Subchapter G [~~not more than \$200~~];

9 (12) [~~for~~] filing an application for approval of an
10 instructor of core real estate courses [~~not more than \$40~~];

11 (13) [~~for~~] transcript evaluation [~~\$20~~];

12 (14) [~~for~~] preparing a license or registration
13 history [~~not more than \$20~~]; and

14 (15) [~~for~~] filing an application for a moral character
15 determination [~~not more than \$50~~].

16 (b) The commission shall adopt rules to [~~may~~] set and
17 collect reasonable fees to implement the continuing education
18 requirements for license holders, including a fee for [~~the~~
19 ~~following fees~~]:

20 (1) [~~for~~] an application for approval of a continuing
21 education provider [~~not more than \$400~~];

22 (2) [~~for~~] an application for approval of a continuing
23 education course of study [~~not more than \$100~~];

24 (3) [~~for~~] an application for approval of an instructor
25 of continuing education courses [~~not more than \$40~~]; and

26 (4) [~~for~~] attendance at a program to train instructors
27 of a continuing education course prescribed under Section

1 1101.455 [~~not more than \$100~~].

2 SECTION 8. Subchapter D, Chapter 1101, Occupations Code, is
3 amended by adding Sections 1101.158, 1101.159, and 1101.160 to read
4 as follows:

5 Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission
6 may appoint advisory committees to perform the advisory functions
7 assigned to the committees by the commission. An advisory
8 committee under this section is subject to Section 2110, Government
9 Code.

10 (b) A member of an advisory committee who is not a member of
11 the commission may not receive compensation for service on the
12 committee. The member may receive reimbursement for actual and
13 necessary expenses incurred in performing committee functions as
14 provided by Section 2110.004, Government Code.

15 (c) A member of an advisory committee serves at the will of
16 the commission.

17 (d) An advisory committee may hold a meeting by telephone
18 conference call or other video or broadcast technology.

19 (e) Advisory committee meetings are subject to Chapter 551,
20 Government Code.

21 Sec. 1101.159. USE OF TECHNOLOGY. The commission shall
22 implement a policy requiring the commission to use appropriate
23 technological solutions to improve the commission's ability to
24 perform its functions. The policy must ensure that the public is
25 able to interact with the commission on the Internet.

26 Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE
27 DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop

1 and implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of commission rules; and

4 (2) appropriate alternative dispute resolution
5 procedures under Chapter 2009, Government Code, to assist in the
6 resolution of internal and external disputes under the commission's
7 jurisdiction.

8 (b) The commission's procedures relating to alternative
9 dispute resolution must conform, to the extent possible, to any
10 model guidelines issued by the State Office of Administrative
11 Hearings for the use of alternative dispute resolution by state
12 agencies.

13 (c) The commission shall designate a trained person to:

14 (1) coordinate the implementation of the policy
15 adopted under Subsection (a);

16 (2) serve as a resource for any training needed to
17 implement the procedures for negotiated rulemaking or alternative
18 dispute resolution; and

19 (3) collect data concerning the effectiveness of those
20 procedures, as implemented by the commission.

21 SECTION 9. Subsection (a), Section 1101.201, Occupations
22 Code, is amended to read as follows:

23 (a) The commission shall prepare information of public
24 interest describing the functions of the commission [~~and the~~
25 ~~procedures by which complaints are filed with and resolved by the~~
26 ~~commission~~].

27 SECTION 10. Section 1101.203, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission
3 shall maintain a system to promptly and efficiently act on
4 complaints filed with the commission. The commission shall
5 maintain a file on each complaint. The file must include:

6 (1) information relating to the parties to the
7 complaint;

8 (2) the subject matter of the complaint;

9 (3) a summary of the results of the review or
10 investigation of the complaint; and

11 (4) the disposition of the complaint [~~an information~~
12 ~~file about each complaint filed with the commission that the~~
13 ~~commission has authority to resolve].~~

14 (b) The commission shall make information available
15 describing its procedures for complaint investigation and
16 resolution.

17 (c) The [~~If a written complaint is filed with the commission~~
18 ~~that the commission has authority to resolve, the] commission[~~, at~~
19 ~~least quarterly and until final disposition of the complaint,~~
20 shall periodically notify the parties to the complaint of the
21 status of the complaint until final disposition, unless the notice
22 would jeopardize an undercover investigation authorized under
23 Section 1101.204.~~

24 SECTION 11. Section 1101.204, Occupations Code, is amended
25 by amending Subsection (a) and adding Subsection (h) to read as
26 follows:

27 (a) The commission may file a complaint and conduct an

1 investigation as necessary to enforce this chapter, Chapter 1102,
2 or a rule adopted under those chapters~~[, on its own motion,~~
3 ~~investigate the actions and records of a license holder]~~.

4 (h) The commission shall ensure that the commission gives
5 priority to the investigation of a complaint filed by a consumer and
6 an enforcement case resulting from the consumer complaint. The
7 commission shall assign priorities and investigate complaints
8 using a risk-based approach based on the:

9 (1) degree of potential harm to a consumer;

10 (2) potential for immediate harm to a consumer;

11 (3) overall severity of the allegations in the
12 complaint;

13 (4) number of license holders potentially involved in
14 the complaint;

15 (5) previous complaint history of the license holder;
16 and

17 (6) number of potential violations in the complaint.

18 SECTION 12. Section 1101.301, Occupations Code, is amended
19 by adding Subsection (c) to read as follows:

20 (c) In establishing accreditation standards for an
21 educational program under Subsection (a), the commission shall
22 adopt rules that require a program to establish that at least 55
23 percent of the program's graduates have passed a licensing exam the
24 first time the exam has been taken by the graduates before the
25 commission may renew the program's accreditation.

26 SECTION 13. Section 1101.303, Occupations Code, is amended
27 to read as follows:

1 Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR
2 COURSE OF STUDY. (a) If the commission determines that an
3 applicant for approval as a continuing education provider satisfies
4 the requirements of this subchapter or Section 1102.205 and any
5 rule adopted under this subchapter or Section 1102.205, the
6 commission may authorize the applicant to offer continuing
7 education for a two-year period.

8 (b) If the commission determines that an applicant for
9 approval of a continuing education course of study satisfies the
10 requirements of this subchapter or Section 1102.205 and any rule
11 adopted under this subchapter or Section 1102.205, the commission
12 may authorize the applicant to offer the course of study for a
13 two-year period.

14 SECTION 14. Subchapter G, Chapter 1101, Occupations Code,
15 is amended by adding Sections 1101.304 and 1101.305 to read as
16 follows:

17 Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The
18 commission shall adopt rules regarding the collection and
19 publication of data relating to examination passage rates for
20 graduates of accredited educational programs.

21 (b) Rules adopted under this section must provide for a
22 method to:

- 23 (1) calculate the examination passage rate;
24 (2) collect the relevant data from the examination
25 administrator or the accredited program; and
26 (3) post the examination passage rate data on the
27 commission's Internet website, in a manner aggregated by

1 educational program and by license group.

2 (c) In determining the educational program a graduate is
3 affiliated with for purposes of this section, the educational
4 program is the program the graduate last attended.

5 Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may
6 appoint a committee to review the performance of an educational
7 program performing below the standards set by the commission under
8 Section 1101.301. The committee shall consist of:

9 (1) at least one commission member;

10 (2) at least one member of the commission staff;

11 (3) individuals licensed under this chapter or Chapter
12 1102; and

13 (4) a representative from the Texas Real Estate
14 Research Center.

15 (b) A committee formed under this section shall review and
16 evaluate any factor causing an educational program's poor
17 performance and report findings and recommendations to improve
18 performance to the program and to the commission.

19 (c) A committee formed under this section may not revoke the
20 accreditation of an educational program. The commission may
21 temporarily suspend a program in the same manner as a license under
22 Subchapter N.

23 SECTION 15. Subsection (b), Section 1101.364, Occupations
24 Code, is amended to read as follows:

25 (b) A person whose license application is denied under this
26 section is entitled to a hearing under Section 1101.657 [~~Before the~~
27 ~~applicant may appeal under Section 1101.658, the applicant must~~

1 ~~file, not later than the 10th day after the date the applicant~~
2 ~~receives the notice, an appeal requesting a time and place for a~~
3 ~~hearing before the commission. If the applicant fails to request a~~
4 ~~hearing as provided by this subsection, the commission's decision~~
5 ~~becomes final and is not subject to judicial review].~~

6 SECTION 16. The heading to Section 1101.451, Occupations
7 Code, is amended to read as follows:

8 Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL.

9 SECTION 17. Section 1101.451, Occupations Code, is amended
10 by adding Subsections (e) and (f) to read as follows:

11 (e) A person whose license has been expired for 90 days or
12 less may renew the license by paying to the commission a fee equal
13 to 1-1/2 times the required renewal fee. If a license has been
14 expired for more than 90 days but less than one year, the person may
15 renew the license by paying to the commission a fee equal to two
16 times the required renewal fee.

17 (f) If a person's license has been expired for one year or
18 longer, the person may not renew the license. The person may obtain
19 a new license by submitting to reexamination and complying with the
20 requirements and procedures for obtaining an original license.

21 SECTION 18. Subsection (b), Section 1101.457, Occupations
22 Code, is amended to read as follows:

23 (b) The commission may require an applicant under this
24 section to:

25 (1) pay a [an additional] fee, not to exceed \$200, in
26 addition to any fee for late renewal of a license under this
27 chapter; and

1 (2) complete the required continuing education not
2 later than the 60th day after the date the license is issued,
3 renewed, or returned to active status.

4 SECTION 19. Subsection (a), Section 1101.657, Occupations
5 Code, is amended to read as follows:

6 (a) If the commission proposes to deny, suspend, or revoke a
7 person's license or certificate of registration, the person is
8 entitled to a hearing conducted by the State Office of
9 Administrative Hearings [~~before the commission or a hearings~~
10 ~~officer appointed by the commission~~].

11 SECTION 20. Subsection (a), Section 1101.658, Occupations
12 Code, is amended to read as follows:

13 (a) A person aggrieved by a ruling, order, or decision under
14 this subchapter [~~of the commission~~] is entitled to appeal to a
15 district court in the county in which the administrative hearing
16 was held.

17 SECTION 21. Subchapter N, Chapter 1101, Occupations Code,
18 is amended by adding Sections 1101.659 through 1101.662 to read as
19 follows:

20 Sec. 1101.659. REFUND. (a) Subject to Subsection (b),
21 the commission may order a person regulated by the commission to pay
22 a refund to a consumer as provided in an agreement resulting from an
23 informal settlement conference or an enforcement order instead of
24 or in addition to imposing an administrative penalty or other
25 sanctions.

26 (b) The amount of a refund ordered as provided in an
27 agreement resulting from an informal settlement conference or an

1 enforcement order may not exceed the amount the consumer paid to the
2 person for a service or accommodation regulated by this commission.
3 The commission may not require payment of other damages or estimate
4 harm in a refund order.

5 Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission
6 by rule shall adopt procedures governing informal disposition of a
7 contested case.

8 (b) Rules adopted under this section must:

9 (1) provide the complainant and the license holder,
10 certificate holder, or regulated entity an opportunity to be heard;
11 and

12 (2) require the presence of:

13 (A) a public member of the commission for a case
14 involving a consumer complaint; and

15 (B) at least two staff members of the commission
16 with experience in the regulatory area that is the subject of the
17 proceeding.

18 Sec. 1101.661. FINAL ORDER. The commission may issue a
19 final order in a proceeding under this subchapter or Subchapter O
20 regarding a person whose license has expired during the course of an
21 investigation or administrative proceeding.

22 Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding
23 officer of the commission shall appoint a disciplinary panel
24 consisting of three commission members to determine whether a
25 person's license to practice under this chapter should be
26 temporarily suspended.

27 (b) If the disciplinary panel determines from the

1 information presented to the panel that a person licensed to
2 practice under this chapter would, by the person's continued
3 practice, constitute a continuing threat to the public welfare, the
4 panel shall temporarily suspend the license of that person.

5 (c) A license may be suspended under this section without
6 notice or hearing on the complaint if:

7 (1) institution of proceedings for a hearing before
8 the commission is initiated simultaneously with the temporary
9 suspension; and

10 (2) a hearing is held under Chapter 2001, Government
11 Code, and this chapter as soon as possible.

12 (d) Notwithstanding Chapter 551, Government Code, the
13 disciplinary panel may hold a meeting by telephone conference call
14 if immediate action is required and convening the panel at one
15 location is inconvenient for any member of the panel.

16 SECTION 22. Section 1101.701, Occupations Code, is amended
17 to read as follows:

18 Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY.

19 (a) The commission may impose an administrative penalty on a
20 person who violates this chapter or a rule adopted or order issued
21 by the commission under this chapter.

22 (b) The commission shall periodically review the
23 commission's enforcement procedures and ensure that administrative
24 penalty and disciplinary proceedings are combined into a single
25 enforcement procedure.

26 (c) The commission may combine a proceeding to impose an
27 administrative penalty with another disciplinary proceeding,

1 including a proceeding to suspend or revoke a license.

2 SECTION 23. Section 1101.702, Occupations Code, is amended
3 by amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) The amount of an administrative penalty may not exceed
6 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues
7 or occurs may be considered a separate violation for purposes of
8 imposing a penalty if the commission determines that the person
9 charged:

10 (1) engaged in an activity for which a broker or
11 salesperson license is required without holding a license; and

12 (2) was not licensed by the commission as a broker or
13 salesperson at any time in the four years preceding the date of the
14 violation.

15 (c) The commission by rule shall adopt a schedule of
16 administrative penalties based on the criteria listed in Subsection
17 (b) for violations subject to an administrative penalty under this
18 section to ensure that the amount of a penalty imposed is
19 appropriate to the violation. The rules adopted under this
20 subsection must provide authority for the commission to suspend or
21 revoke a license in addition to or instead of imposing an
22 administrative penalty.

23 SECTION 24. The heading to Section 1101.703, Occupations
24 Code, is amended to read as follows:

25 Sec. 1101.703. [~~REPORT AND~~] NOTICE OF VIOLATION AND
26 PENALTY.

27 SECTION 25. Subsection (a), Section 1101.703, Occupations

1 Code, is amended to read as follows:

2 (a) If, after investigation of a possible violation and the
3 facts relating to that violation, the administrator determines that
4 a violation has occurred, the administrator may issue a notice of
5 violation [~~report~~] stating:

6 (1) a brief summary of the alleged violation [~~the~~
7 ~~facts on which the determination is based~~]; [~~and~~]

8 (2) the administrator's recommendation on the
9 imposition of the administrative penalty or another disciplinary
10 sanction, including a recommendation on the amount of the penalty;
11 and

12 (3) that the respondent has the right to a hearing to
13 contest the alleged violation, the recommended penalty, or both.

14 SECTION 26. Section 1101.704, Occupations Code, is amended
15 to read as follows:

16 Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED.

17 (a) Not later than the 20th day after the date the person receives
18 the notice under Section 1101.703, the person may:

19 (1) accept the administrator's determination,
20 including the recommended administrative penalty; or

21 (2) request in writing a hearing on the occurrence of
22 the violation, the amount of the penalty, or both [~~determination~~].

23 (b) If the person accepts the administrator's
24 determination, or fails to respond in a timely manner to the notice,
25 the commission by order shall approve the determination and order
26 payment of the recommended penalty.

27 SECTION 27. The heading to Section 1101.705, Occupations

1 Code, is amended to read as follows:

2 Sec. 1101.705. HEARING; DECISION [~~BY COMMISSION~~].

3 SECTION 28. Subsections (a), (b), (c), and (e), Section
4 1101.705, Occupations Code, are amended to read as follows:

5 (a) If the person requests a hearing [~~or fails to timely~~
6 ~~respond to the notice~~], the administrator shall set a hearing and
7 give notice of the hearing to the person.

8 (b) An administrative law judge of the State Office of
9 Administrative Hearings [~~A hearings examiner designated by the~~
10 ~~administrator~~] shall conduct the hearing. The administrative law
11 judge [~~hearings examiner~~] shall:

- 12 (1) make findings of fact and conclusions of law; and
13 (2) promptly issue to the commission a proposal for
14 decision regarding the occurrence of the violation and the amount
15 of any proposed administrative penalty.

16 (c) Based on the findings of fact, conclusions of law, and
17 proposal for decision of the administrative law judge [~~hearings~~
18 ~~examiner~~], the commission by order may determine that:

- 19 (1) a violation occurred and impose an administrative
20 penalty; or
21 (2) a violation did not occur.

22 (e) The notice of the commission's order given to the person
23 under Chapter 2001, Government Code, must include a statement of
24 the person's right to judicial review of the order [~~The commission~~
25 ~~may authorize the hearings examiner to conduct the hearing and~~
26 ~~enter a final decision~~].

27 SECTION 29. Section 1101.707, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR
3 APPEAL. (a) Not later than the 30th day after the date the
4 commission's order becomes final, the person shall:

5 (1) pay the administrative penalty; or

6 (2) file a petition for judicial review [~~with a~~
7 ~~district court in Travis County~~] contesting the occurrence [~~fact~~]
8 of the violation, the amount of the penalty, or both.

9 (b) Within the 30-day period prescribed by Subsection (a), a
10 person who files a petition for judicial review [~~acts under~~
11 ~~Subsection (a)(2)~~] may:

12 (1) stay enforcement of the penalty by:

13 (A) [~~(1)~~] paying the penalty to the court
14 [~~administrator~~] for placement in an escrow account; or

15 (B) [~~(2)~~] giving the court [~~administrator~~] a
16 supersedeas bond in a form approved by the court [~~administrator~~]
17 that:

18 (i) [~~(A)~~] is for the amount of the penalty;

19 and

20 (ii) [~~(B)~~] is effective until judicial
21 review of the order is final; or

22 (2) request the court to stay enforcement by:

23 (A) [~~(3)~~] filing with the court [~~administrator~~]
24 an affidavit of the person stating that the person is financially
25 unable to pay the penalty and is financially unable to give the
26 supersedeas bond; and

27 (B) giving a copy of the affidavit to the

1 administrator by certified mail.

2 (c) If the administrator receives a copy of an affidavit
3 under Subsection (b)(2), the administrator may file with the court,
4 within five days after the date the copy is received, a contest to
5 the affidavit [~~A person who fails to take action as provided by this~~
6 ~~section waives the right to judicial review of the commission's~~
7 ~~order].~~

8 (d) The court shall hold a hearing on the facts alleged in
9 the affidavit as soon as practicable and shall stay the enforcement
10 of the penalty on finding that the alleged facts are true. The
11 person who files an affidavit has the burden of proving that the
12 person is financially unable to pay the penalty and to give a
13 supersedeas bond.

14 SECTION 30. Subchapter O, Chapter 1101, Occupations Code,
15 is amended by adding Section 1101.7085 to read as follows:

16 Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court
17 sustains the determination that a violation occurred, the court may
18 uphold or reduce the amount of the administrative penalty and order
19 the person to pay the full or reduced amount of the penalty.

20 (b) If the court does not sustain the finding that a
21 violation occurred, the court shall order that a penalty is not
22 owed.

23 SECTION 31. Section 1101.709, Occupations Code, is amended
24 to read as follows:

25 Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If
26 after judicial review the administrative penalty is reduced or is
27 not upheld by the court, the court [~~administrator~~] shall[+]

1 ~~[(1)]~~ remit the appropriate amount, plus accrued
2 interest, to the person if the person paid the penalty~~[, or~~

3 ~~[(2) execute a release of the bond if the person gave a~~
4 ~~supersedeas bond]~~.

5 (b) The interest [~~Interest~~] accrues [~~under Subsection~~
6 ~~(a)(1)~~] at the rate charged on loans to depository institutions by
7 the New York Federal Reserve Bank.

8 (c) The interest shall be paid for the period beginning on
9 the date the penalty is paid and ending on the date the penalty is
10 remitted.

11 (d) If the person gave a supersedeas bond and the penalty is
12 not upheld by the court, the court shall order, when the court's
13 judgment becomes final, the release of the bond.

14 (e) If the person gave a supersedeas bond and the amount of
15 the penalty is reduced, the court shall order the release of the
16 bond after the person pays the reduced amount.

17 SECTION 32. Subchapter O, Chapter 1101, Occupations Code,
18 is amended by adding Section 1101.710 to read as follows:

19 Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding
20 under this subchapter is subject to Chapter 2001, Government Code.

21 SECTION 33. Subchapter P, Chapter 1101, Occupations Code,
22 is amended by adding Section 1101.759 to read as follows:

23 Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears
24 to the commission that a person is violating this chapter or Chapter
25 1102 or a rule adopted under this chapter or Chapter 1102, the
26 commission, after notice and opportunity for a hearing, may issue a
27 cease and desist order prohibiting the person from engaging in the

1 activity.

2 (b) A violation of an order under this section constitutes
3 grounds for imposing an administrative penalty under Subchapter O.

4 SECTION 34. Subsection (a), Section 1102.051, Occupations
5 Code, is amended to read as follows:

6 (a) The Texas Real Estate Inspector Committee is an advisory
7 committee [~~consists of nine members~~] appointed by the commission.

8 SECTION 35. Section 1102.205, Occupations Code, is amended
9 to read as follows:

10 Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS.

11 (a) The commission shall approve, recognize, prepare, or
12 administer a continuing education program for inspectors.

13 (b) As a prerequisite for renewal of a real estate inspector
14 license, professional inspector license, or apprentice inspector
15 license, the inspector must participate in the continuing education
16 program and submit evidence satisfactory to the commission of
17 successful completion of at least 16 classroom hours of core real
18 estate inspection courses or continuing education courses for each
19 year of the license period preceding the renewal.

20 SECTION 36. The heading to Subchapter I, Chapter 1102,
21 Occupations Code, is amended to read as follows:

22 SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND
23 ENFORCEMENT PROVISIONS

24 SECTION 37. Subchapter I, Chapter 1102, Occupations Code,
25 is amended by adding Section 1102.408 to read as follows:

26 Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding
27 officer of the commission shall appoint a disciplinary panel

1 consisting of three commission members to determine whether a
2 person's license to practice under this chapter should be
3 temporarily suspended.

4 (b) If the disciplinary panel determines from the
5 information presented to the panel that a person licensed to
6 practice under this chapter would, by the person's continued
7 practice, constitute a continuing threat to the public welfare, the
8 panel shall temporarily suspend the license of that person.

9 (c) A license may be suspended under this section without
10 notice or hearing on the complaint if:

11 (1) institution of proceedings for a hearing before
12 the commission is initiated simultaneously with the temporary
13 suspension; and

14 (2) a hearing is held under Chapter 2001, Government
15 Code, and this chapter as soon as possible.

16 (d) Notwithstanding Chapter 551, Government Code, the
17 disciplinary panel may hold a meeting by telephone conference call
18 if immediate action is required and convening the panel at one
19 location is inconvenient for any member of the panel.

20 SECTION 38. Subsection (a), Section 1103.101, Occupations
21 Code, is amended to read as follows:

22 (a) The administrator of the Texas Real Estate Commission
23 shall serve as [board shall employ a] commissioner.

24 SECTION 39. Subsection (a), Section 1103.103, Occupations
25 Code, is amended to read as follows:

26 (a) The board shall determine the salaries of the
27 [~~commissioner,~~] officers[~~,~~] and employees of the board.

1 SECTION 40. Section 1103.104, Occupations Code, is amended
2 to read as follows:

3 Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner
4 shall:

5 (1) disseminate information;

6 (2) administer rules adopted by the board under this
7 chapter;

8 (3) review each application for a certificate or
9 license and make a recommendation for final action to the board;

10 (4) review and make recommendations to the board
11 regarding the adoption of rules relating to:

12 (A) the examination required by Subchapter F;

13 (B) education and experience requirements for
14 issuance of certificates and licenses;

15 (C) continuing education for a certified or
16 licensed appraiser;

17 (D) standards of professional practice and
18 ethics for a certified or licensed appraiser;

19 (E) standards for a real estate appraisal
20 performed by a certified or licensed appraiser; and

21 (F) the fees established by the board under
22 Section 1103.156;

23 (5) collect fees established by the board; ~~and~~

24 (6) manage the staff and employees of the board; and

25 (7) perform any other duty prescribed by the board
26 under this chapter.

27 SECTION 41. Section 1103.504, Occupations Code, is amended

1 to read as follows:

2 Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The
3 attorney general shall provide legal representation for the public
4 interest in all proceedings before the administrative law judge of
5 the State Office of Administrative Hearings [~~board~~] and may not
6 represent the board in a contested case before the State Office of
7 Administrative Hearings [~~board~~].

8 SECTION 42. Subsections (a) and (d), Section 1103.508,
9 Occupations Code, are amended to read as follows:

10 (a) A contested case hearing shall [~~may~~] be conducted before
11 an administrative law judge of the State Office of Administrative
12 Hearings [~~a majority of the board members~~].

13 (d) The administrative law judge [~~designated presiding~~
14 ~~officer~~] shall control the proceedings and may:

- 15 (1) administer oaths;
- 16 (2) admit or exclude testimony or other evidence; and
- 17 (3) rule on all motions and objections.

18 SECTION 43. Subsection (a), Section 1103.510, Occupations
19 Code, is amended to read as follows:

20 (a) If an appraiser or appraiser trainee receives proper
21 notice of a contested case hearing but does not appear in person at
22 the hearing, the administrative law judge [~~board and presiding~~
23 ~~officer~~] may conduct the hearing or enter an order, as the judge
24 [~~board~~] determines appropriate.

25 SECTION 44. Subsection (c), Section 1103.512, Occupations
26 Code, is amended to read as follows:

27 (c) Before testimony may be presented, the record must:

1 (1) show the identities of:

2 (A) any ~~[the]~~ board members present;

3 (B) the administrative law judge ~~[presiding~~
4 ~~officer]~~; and

5 (C) the parties and their representatives; and

6 (2) state that all testimony is being recorded.

7 SECTION 45. Section 1103.513, Occupations Code, is amended
8 to read as follows:

9 Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case
10 hearing shall be conducted in the following order, subject to
11 modification at the discretion of the administrative law judge
12 ~~[board]~~:

13 (1) the administrative law judge ~~[presiding officer]~~
14 shall read a summary of the charges and answers to the charges and
15 other responsive pleadings filed by the appraiser or appraiser
16 trainee before the hearing;

17 (2) the attorney representing the board shall make a
18 brief opening statement, including a summary of the charges and a
19 list of the witnesses and documents to support the charges;

20 (3) the appraiser or appraiser trainee may make an
21 opening statement, including the names of any witnesses the
22 appraiser or appraiser trainee may call;

23 (4) the attorney representing the board shall present
24 evidence, concluding with a summary of the evidence for the state;

25 (5) the appraiser or appraiser trainee shall present
26 evidence;

27 (6) the attorney representing the board may present

1 rebuttal evidence;

2 (7) the appraiser or appraiser trainee may present
3 rebuttal evidence; and

4 (8) the closing arguments shall be made in the
5 following order:

6 (A) the attorney representing the board;

7 (B) the appraiser or appraiser trainee; and

8 (C) the attorney representing the board on
9 rebuttal.

10 SECTION 46. Section 1103.516, Occupations Code, is amended
11 to read as follows:

12 Sec. 1103.516. DIRECT EXAMINATION. In a contested case
13 hearing, the administrative law judge [~~presiding officer~~] may
14 conduct a direct examination of a witness at any stage of the
15 witness's testimony.

16 SECTION 47. Section 1103.518, Occupations Code, is amended
17 to read as follows:

18 Sec. 1103.518. [~~BOARD~~] ACTION AFTER HEARING. On
19 conclusion of a contested case hearing and on submission of all
20 written responses allowed under Section 1103.515, the
21 administrative law judge shall [~~board~~]:

22 (1) [~~shall~~] make findings of fact and conclusions of
23 law; and

24 (2) issue to the board a proposal for decision that the
25 board [~~may~~] take one or more of the following actions:

26 (A) dismiss the charges, including issuing an
27 order declaring that the case file is confidential;

1 (B) suspend or revoke the appraiser's
2 certificate or license or the appraiser trainee's approval;

3 (C) impose a period of probation with or without
4 conditions;

5 (D) require the appraiser to submit to
6 reexamination for a certificate or license;

7 (E) require the appraiser or appraiser trainee to
8 participate in additional professional education or continuing
9 education;

10 (F) issue a public or private reprimand or a
11 warning;

12 (G) issue a consent order; or

13 (H) impose an administrative penalty as
14 prescribed by Section 1103.552.

15 SECTION 48. Subsection (c), Section 1103.520, Occupations
16 Code, is amended to read as follows:

17 (c) On rehearing, the administrative law judge [~~board~~]
18 shall consider facts not presented in the original hearing if:

19 (1) the facts arose after the original hearing was
20 concluded;

21 (2) the party offering the evidence could not
22 reasonably have provided the evidence at the original hearing; or

23 (3) the party offering the evidence was misled by a
24 party regarding the necessity for offering the evidence at the
25 original hearing.

26 SECTION 49. Subsection (a), Section 1103.521, Occupations
27 Code, is amended to read as follows:

1 (a) The administrative law judge [~~board~~] shall file the
2 judge's [~~its~~] final decision in a contested case hearing with the
3 commissioner.

4 SECTION 50. Subchapter H, Chapter 1303, Occupations Code,
5 is amended by adding Sections 1303.355 and 1303.356 to read as
6 follows:

7 Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The
8 commission may impose an administrative penalty as provided by
9 Subchapter O, Chapter 1101, on a person who violates this chapter or
10 a rule adopted or order issued by the commission under this chapter.

11 (b) The amount of an administrative penalty may not exceed
12 \$5,000 for each violation. Each day a violation continues or occurs
13 may be considered a separate violation for purposes of imposing a
14 penalty.

15 (c) In determining the amount of the penalty, the
16 administrator shall consider:

17 (1) the seriousness of the violation, including the
18 nature, circumstances, extent, and gravity of the violation;

19 (2) the economic harm caused by the violation;

20 (3) the history of previous violations;

21 (4) the amount necessary to deter a future violation;

22 (5) efforts to correct the violation; and

23 (6) any other matter that justice may require.

24 (d) The commission by rule shall adopt a schedule of
25 administrative penalties based on the criteria listed in Subsection
26 (c) for violations subject to an administrative penalty under this
27 section to ensure that the amount of a penalty imposed is

1 appropriate to the violation.

2 Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding
3 officer of the commission shall appoint a disciplinary panel
4 consisting of three commission members to determine whether a
5 person's license to practice under this chapter should be
6 temporarily suspended.

7 (b) If the disciplinary panel determines from the
8 information presented to the panel that a person licensed to
9 practice under this chapter would, by the person's continued
10 practice, constitute a continuing threat to the public welfare, the
11 panel shall temporarily suspend the license of that person.

12 (c) A license may be suspended under this section without
13 notice or hearing on the complaint if:

14 (1) institution of proceedings for a hearing before
15 the commission is initiated simultaneously with the temporary
16 suspension; and

17 (2) a hearing is held under Chapter 2001, Government
18 Code, and this chapter as soon as possible.

19 (d) Notwithstanding Chapter 551, Government Code, the
20 disciplinary panel may hold a meeting by telephone conference call
21 if immediate action is required and convening the panel at one
22 location is inconvenient for any member of the panel.

23 SECTION 51. Subchapter C, Chapter 221, Property Code, is
24 amended by adding Section 221.027 to read as follows:

25 Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding
26 officer of the commission shall appoint a disciplinary panel
27 consisting of three commission members to determine whether the

1 registration for a timeshare plan under this chapter should be
2 temporarily suspended.

3 (b) If the disciplinary panel determines from the
4 information presented to the panel that a timeshare plan registered
5 under this chapter would, by the continued disposition of the
6 timeshare property, constitute a continuing threat to the public
7 welfare, the panel shall temporarily suspend the registration of
8 the timeshare plan.

9 (c) A registration may be suspended under this section
10 without notice or hearing on the complaint if:

11 (1) institution of proceedings for a hearing before
12 the commission is initiated simultaneously with the temporary
13 suspension; and

14 (2) a hearing is held under Chapter 2001, Government
15 Code, and this chapter as soon as possible.

16 (d) Notwithstanding Chapter 551, Government Code, the
17 disciplinary panel may hold a meeting by telephone conference call
18 if immediate action is required and convening the panel at one
19 location is inconvenient for any member of the panel.

20 SECTION 52. The following provisions of the Occupations
21 Code are repealed:

- 22 (1) Subsection (g), Section 1101.204;
23 (2) Subsections (c), (d), and (e), Section 1101.364;
24 (3) Subsections (b), (c), and (d), Section 1101.657;
25 (4) Subsection (b), Section 1101.703;
26 (5) Subsections (b), (c), and (d), Section 1102.051;
27 (6) Section 1102.052;

- 1 (7) Section 1102.053;
- 2 (8) Section 1102.054;
- 3 (9) Section 1102.055;
- 4 (10) Section 1102.056;
- 5 (11) Section 1102.057;
- 6 (12) Subsection (a), Section 1102.058;
- 7 (13) Section 1102.059;
- 8 (14) Section 1102.061;
- 9 (15) Section 1102.062; and
- 10 (16) Subsection (c), Section 1103.508.

11 SECTION 53. (a) Not later than January 1, 2008, the Texas
12 Real Estate Commission shall:

13 (1) adopt the policies required by Sections 1101.159
14 and 1101.160, Occupations Code, as added by this Act; and

15 (2) adopt the rules required by Chapter 1101,
16 Occupations Code, as amended by this Act.

17 (b) As soon as practicable after the effective date of this
18 Act, the commissioner of the Texas Real Estate Commission shall
19 assume the administrative and management duties over the Texas
20 Appraiser Licensing and Certification Board, as required by Section
21 1103.104, Occupations Code, as amended by this Act.

22 SECTION 54. (a) The changes in law made by this Act to
23 Section 1101.053, Occupations Code, regarding the prohibitions on
24 or qualifications of members of the Texas Real Estate Commission do
25 not affect the entitlement of a member serving on the commission
26 immediately before September 1, 2007, to continue to serve and
27 function as a member of the commission for the remainder of the

1 member's term. The changes in law made by that section apply only
2 to a member appointed on or after September 1, 2007.

3 (b) The changes in law made by this Act regarding the
4 filing, investigation, or resolution of a complaint under Chapter
5 1101, Occupations Code, as amended by this Act, apply only to a
6 complaint filed with the Texas Real Estate Commission on or after
7 the effective date of this Act. A complaint filed before the
8 effective date of this Act is governed by the law as it existed
9 immediately before that date, and the former law is continued in
10 effect for that purpose.

11 (c) The change in law made by this Act regarding conduct
12 that is grounds for imposition of a disciplinary sanction,
13 including a refund, temporary license suspension, or cease and
14 desist order, applies only to conduct that occurs on or after the
15 effective date of this Act. Conduct that occurs before the
16 effective date of this Act is governed by the law in effect on the
17 date the conduct occurred, and the former law is continued in effect
18 for that purpose.

19 (d) The changes in law made by this Act regarding the
20 procedure for an administrative penalty apply only to a proceeding
21 commenced on or after the effective date of this Act. A proceeding
22 commenced before the effective date of this Act is governed by the
23 law in effect on the date the proceeding commenced, and the former
24 law is continued in effect for that purpose.

25 (e) The change in law made by this Act regarding the renewal
26 of an expired license applies only to a license that expires on or
27 after the effective date of this Act. A license that expires before

1 the effective date of this Act is governed by the law in effect on
2 the date the license expired, and the former law is continued in
3 effect for that purpose.

4 (f) The change in law made by this Act regarding
5 accreditation standards for educational programs under Chapter
6 1101, Occupations Code, as amended by this Act, applies only to an
7 accreditation granted or renewed on or after September 1, 2009. An
8 educational program renewing an accreditation on or after the
9 effective date of this Act but before September 1, 2009, should
10 strive to meet the new accreditation standards under Chapter 1101,
11 Occupations Code, as amended by this Act, but an accreditation
12 granted or renewed before September 1, 2009, is governed by the law
13 in effect on the date the accreditation expired, and the former law
14 is continued in effect for that purpose.

15 (g) The change in law made by this Act to the authority of
16 the Texas Real Estate Inspector Committee to develop and recommend
17 rules under Chapter 1102, Occupations Code, as amended by this Act,
18 applies only to a rule proposed for adoption on or after the
19 effective date of this Act. A rule proposed for adoption before the
20 effective date of this Act is governed by the law in effect on the
21 date the rule was proposed for adoption, and the former law is
22 continued in effect for that purpose.

23 SECTION 55. This Act takes effect September 1, 2007.