

By: Shapleigh

S.B. No. 914

Substitute the following for S.B. No. 914:

By: Thompson

C.S.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. Subchapter A, Chapter 1101, Occupations Code, is
16 amended by adding Section 1101.007 to read as follows:

17 Sec. 1101.007. COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a)
18 The commission shall:

19 (1) comply with and implement the management action
20 recommendations regarding the commission adopted by the Sunset
21 Advisory Commission on January 10, 2007, as a result of its review
22 of the commission; and

23 (2) report to the Sunset Advisory Commission not later
24 than November 1, 2008, the information the Sunset Advisory

1 Commission requires regarding the commission's implementation of
2 the recommendations under Subdivision (1).

3 (b) This section expires June 1, 2009.

4 SECTION 3. Section 1101.053, Occupations Code, is amended
5 to read as follows:

6 Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
7 In this section, "Texas trade association" means a [~~nonprofit,~~
8 cooperative~~]~~ and voluntarily joined statewide association of
9 business or professional competitors in this state designed to
10 assist its members and its industry or profession in dealing with
11 mutual business or professional problems and in promoting their
12 common interest.

13 (b) A person may not be a member of the commission and may
14 not be a commission employee employed in a "bona fide executive,
15 administrative, or professional capacity," as that phrase is used
16 for purposes of establishing an exemption to the overtime
17 provisions of the federal Fair Labor Standards Act of 1938 (29
18 U.S.C. Section 201 et seq.) if:

19 (1) the person is an officer, [A state elected
20 president, president-elect, vice president, or
21 secretary-treasurer,] employee, or paid consultant of a Texas trade
22 association in the real estate industry; or

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

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

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

13 SECTION 4. Sections 1101.057(a) and (c), Occupations Code,
14 are amended to read as follows:

15 (a) It is a ground for removal from the commission that a
16 member:

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

19 (2) does not maintain during service on the commission
20 the qualifications required by Section 1101.051(a) or (b) or
21 1101.052;

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

24 (4) cannot, because of illness or disability,
25 discharge the member's duties for a substantial part of the member's
26 term; or

27 (5) is absent from more than half of the regularly

1 scheduled commission meetings that the member is eligible to attend
2 during each calendar year, unless the absence is excused by
3 majority vote of the commission.

4 (c) If the administrator has knowledge that a potential
5 ground for removal [~~of a commission member~~] exists, the
6 administrator shall notify the presiding officer of the commission
7 of the potential ground. The presiding officer shall then notify
8 the governor and the attorney general that a potential ground for
9 removal exists. If the potential ground for removal involves the
10 presiding officer, the administrator shall notify the next highest
11 ranking officer of the commission, who shall then notify the
12 governor and the attorney general that a potential ground for
13 removal exists.

14 SECTION 5. Subchapter B, Chapter 1101, Occupations Code, is
15 amended by adding Section 1101.059 to read as follows:

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

21 (b) The training program must provide the person with
22 information regarding:

23 (1) this chapter and other laws regulated by the
24 commission;

25 (2) the programs, functions, rules, and budget of the
26 commission;

27 (3) the results of the most recent formal audit of the

1 commission;

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

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

7 (c) A person appointed to the commission is entitled to
8 reimbursement, as provided by the General Appropriations Act, for
9 the travel expenses incurred in attending the training program
10 regardless of whether the attendance at the program occurs before
11 or after the person qualifies for office.

12 SECTION 6. Section 1101.101(a), Occupations Code, is
13 amended to read as follows:

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

15 SECTION 7. Section 1101.102, Occupations Code, is amended
16 to read as follows:

17 Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The
18 commission shall develop and implement policies that clearly
19 separate the policymaking responsibilities of the commission and
20 the management responsibilities of the administrator and the
21 [~~define the respective responsibilities of the commission and the~~
22 ~~commission~~] staff of the commission.

23 SECTION 8. Section 1101.151(b), Occupations Code, is
24 amended to read as follows:

25 (b) The commission may:

26 (1) adopt and enforce rules necessary to administer
27 this chapter and Chapter 1102; and

1 (2) establish standards of conduct and ethics for
2 persons licensed under this chapter and Chapter 1102 to:

3 (A) fulfill the purposes of this chapter and
4 Chapter 1102; and

5 (B) ensure compliance with this chapter and
6 Chapter 1102[~~, and~~

7 [~~(3) authorize specific employees to conduct hearings~~
8 ~~and issue final decisions in contested cases].~~

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

11 (a) The commission shall adopt rules to charge and collect
12 reasonable fees, including a 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 [~~7, not more than \$20~~];

2 (9) [~~for~~] filing a request to replace a lost or
3 destroyed license or certificate of registration [~~7, not more than~~
4 ~~\$20~~];

5 (10) [~~for~~] filing an application for approval of an
6 education program under Subchapter G [~~7, not more than \$400~~];

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

9 (12) [~~for~~] filing an application for approval of an
10 instructor of core real estate courses [~~7, not more than \$40~~];

11 (13) [~~for~~] transcript evaluation [~~7, \$20~~];

12 (14) [~~for~~] preparing a license or registration
13 history [~~7, not more than \$20~~]; ~~and~~

14 (15) [~~for~~] filing an application for a moral character
15 determination; and

16 (16) conducting a criminal background check in
17 connection with the annual renewal of a license under this chapter
18 [7, not more than \$50].

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

23 (1) [~~for~~] an application for approval of a continuing
24 education provider [~~7, not more than \$400~~];

25 (2) [~~for~~] an application for approval of a continuing
26 education course of study [~~7, not more than \$100~~];

27 (3) [~~for~~] an application for approval of an instructor

1 of continuing education courses [~~, not more than \$40~~]; and

2 (4) [~~for~~] attendance at a program to train instructors
3 of a continuing education course prescribed under Section
4 1101.455 [~~, not more than \$100~~].

5 SECTION 10. Subchapter D, Chapter 1101, Occupations Code,
6 is amended by adding Sections 1101.158, 1101.159, and 1101.160 to
7 read as follows:

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

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

18 (c) A member of an advisory committee serves at the will of
19 the commission.

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

22 (e) Advisory committee meetings are subject to Chapter 551,
23 Government Code.

24 Sec. 1101.159. USE OF TECHNOLOGY. The commission shall
25 implement a policy requiring the commission to use appropriate
26 technological solutions to improve the commission's ability to
27 perform its functions. The policy must ensure that the public is

1 able to interact with the commission on the Internet.

2 Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE
3 DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop
4 and implement a policy to encourage the use of:

5 (1) negotiated rulemaking procedures under Chapter
6 2008, Government Code, for the adoption of commission rules; and

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

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

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

17 (1) coordinate the implementation of the policy
18 adopted under Subsection (a);

19 (2) serve as a resource for any training needed to
20 implement the procedures for negotiated rulemaking or alternative
21 dispute resolution; and

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

24 SECTION 11. Section 1101.201(a), Occupations Code, is
25 amended to read as follows:

26 (a) The commission shall prepare information of public
27 interest describing the functions of the commission [~~and the~~

1 ~~procedures by which complaints are filed with and resolved by the~~
2 ~~commission].~~

3 SECTION 12. Section 1101.203, Occupations Code, is amended
4 to read as follows:

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

9 (1) information relating to the parties to the
10 complaint;

11 (2) the subject matter of the complaint;

12 (3) a summary of the results of the review or
13 investigation of the complaint; and

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

17 (b) The commission shall make information available
18 describing its procedures for complaint investigation and
19 resolution.

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

27 SECTION 13. Section 1101.204, Occupations Code, is amended

1 by amending Subsection (a) and adding Subsection (h) to read as
2 follows:

3 (a) The commission or commission staff may file a complaint
4 and conduct an investigation as necessary to enforce this chapter,
5 Chapter 1102, or a rule adopted under those chapters~~[, on its own~~
6 ~~motion, investigate the actions and records of a license holder]~~.

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

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

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

14 (3) overall severity of the allegations in the
15 complaint;

16 (4) number of license holders potentially involved in
17 the complaint;

18 (5) previous complaint history of the license holder;

19 and

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

21 SECTION 14. Section 1101.301, Occupations Code, is amended
22 by adding Subsection (c) to read as follows:

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

1 commission may renew the program's accreditation.

2 SECTION 15. Section 1101.303, Occupations Code, is amended
3 to read as follows:

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

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

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

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

24 (b) Rules adopted under this section must provide for a
25 method to:

26 (1) calculate the examination passage rate;

27 (2) collect the relevant data from the examination

1 administrator or the accredited program; and

2 (3) post the examination passage rate data on the
3 commission's Internet website, in a manner aggregated by
4 educational program and by license group.

5 (c) In determining the educational program a graduate is
6 affiliated with for purposes of this section, the educational
7 program is the program the graduate last attended.

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

12 (1) at least one commission member;

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

14 (3) individuals licensed under this chapter or Chapter
15 1102; and

16 (4) a representative from the Texas Real Estate
17 Research Center.

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

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

26 SECTION 17. Section 1101.364(b), Occupations Code, is
27 amended to read as follows:

1 (b) A person whose license application is denied under this
2 section is entitled to a hearing under Section 1101.657. [~~Before~~
3 ~~the applicant may appeal under Section 1101.658, the applicant must~~
4 ~~file, not later than the 10th day after the date the applicant~~
5 ~~receives the notice, an appeal requesting a time and place for a~~
6 ~~hearing before the commission. If the applicant fails to request a~~
7 ~~hearing as provided by this subsection, the commission's decision~~
8 ~~becomes final and is not subject to judicial review.~~]

9 SECTION 18. The heading to Section 1101.451, Occupations
10 Code, is amended to read as follows:

11 Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL.

12 SECTION 19. Section 1101.451, Occupations Code, is amended
13 by amending Subsection (d) and adding Subsections (e) and (f) to
14 read as follows:

15 (d) Except as provided by Subsection (e), a [A] renewal fee
16 for a license under this chapter may not exceed, calculated on an
17 annual basis, the amount of the sum of the fees established under
18 Sections 1101.152, 1101.154, and 1101.603.

19 (e) A person whose license has been expired for 90 days or
20 less may renew the license by paying to the commission a fee equal
21 to 1-1/2 times the required renewal fee. If a license has been
22 expired for more than 90 days but less than one year, the person may
23 renew the license by paying to the commission a fee equal to two
24 times the required renewal fee.

25 (f) If a person's license has been expired for one year or
26 longer, the person may not renew the license. The person may obtain
27 a new license by submitting to reexamination and complying with the

1 requirements and procedures for obtaining an original license.

2 SECTION 20. Section 1101.457(b), Occupations Code, is
3 amended to read as follows:

4 (b) The commission may require an applicant under this
5 section to:

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

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

12 SECTION 21. Section 1101.657(a), Occupations Code, is
13 amended to read as follows:

14 (a) If the commission proposes to deny, suspend, or revoke a
15 person's license or certificate of registration, the person is
16 entitled to a hearing conducted by the State Office of
17 Administrative Hearings [before the commission or a hearings
18 officer appointed by the commission].

19 SECTION 22. Section 1101.658(a), Occupations Code, is
20 amended to read as follows:

21 (a) A person aggrieved by a ruling, order, or decision under
22 this subchapter [of the commission] is entitled to appeal to a
23 district court in the county in which the administrative hearing
24 was held.

25 SECTION 23. Subchapter N, Chapter 1101, Occupations Code,
26 is amended by adding Sections 1101.659, 1101.660, 1101.661, and
27 1101.662 to read as follows:

1 Sec. 1101.659. REFUND. (a) Subject to Subsection (b),
2 the commission may order a person regulated by the commission to pay
3 a refund to a consumer as provided in an agreement resulting from an
4 informal settlement conference or an enforcement order instead of
5 or in addition to imposing an administrative penalty or other
6 sanctions.

7 (b) The amount of a refund ordered as provided in an
8 agreement resulting from an informal settlement conference or an
9 enforcement order may not exceed the amount the consumer paid to the
10 person for a service or accommodation regulated by this commission.
11 The commission may not require payment of other damages or estimate
12 harm in a refund order.

13 Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission
14 by rule shall adopt procedures governing informal disposition of a
15 contested case.

16 (b) Rules adopted under this section must:

17 (1) provide the complainant and the license holder,
18 certificate holder, or regulated entity an opportunity to be heard;
19 and

20 (2) require the presence of:

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

23 (B) at least two staff members of the commission
24 with experience in the regulatory area that is the subject of the
25 proceeding.

26 Sec. 1101.661. FINAL ORDER. The commission may issue a
27 final order in a proceeding under this subchapter or Subchapter O

1 regarding a person whose license has expired during the course of an
2 investigation or administrative proceeding.

3 Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding
4 officer of the commission shall appoint a disciplinary panel
5 consisting of three commission members to determine whether a
6 person's license to practice under this chapter should be
7 temporarily suspended.

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

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

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

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

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

24 SECTION 24. Section 1101.701, Occupations Code, is amended
25 to read as follows:

26 Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)
27 The commission may impose an administrative penalty on a person who

1 violates this chapter or a rule adopted or order issued by the
2 commission under this chapter.

3 (b) The commission shall periodically review the
4 commission's enforcement procedures and ensure that administrative
5 penalty and disciplinary proceedings are combined into a single
6 enforcement procedure.

7 (c) The commission may combine a proceeding to impose an
8 administrative penalty with another disciplinary proceeding,
9 including a proceeding to suspend or revoke a license.

10 SECTION 25. Section 1101.702, Occupations Code, is amended
11 by amending Subsection (a) and adding Subsection (c) to read as
12 follows:

13 (a) The amount of an administrative penalty may not exceed
14 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues
15 or occurs may be considered a separate violation for purposes of
16 imposing a penalty [~~if the commission determines that the person~~
17 ~~charged:~~

18 [~~(1) engaged in an activity for which a broker or~~
19 ~~salesperson license is required without holding a license; and~~

20 [~~(2) was not licensed by the commission as a broker or~~
21 ~~salesperson at any time in the four years preceding the date of the~~
22 ~~violation]~~.

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

1 subsection must provide authority for the commission to suspend or
2 revoke a license in addition to or instead of imposing an
3 administrative penalty.

4 SECTION 26. The heading to Section 1101.703, Occupations
5 Code, is amended to read as follows:

6 Sec. 1101.703. [~~REPORT AND~~] NOTICE OF VIOLATION AND
7 PENALTY.

8 SECTION 27. Section 1101.703(a), Occupations Code, is
9 amended to read as follows:

10 (a) If, after investigation of a possible violation and the
11 facts relating to that violation, the administrator determines that
12 a violation has occurred, the administrator may issue a notice of
13 violation [~~report~~] stating:

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

16 (2) the administrator's recommendation on the
17 imposition of the administrative penalty or another disciplinary
18 sanction, including a recommendation on the amount of the penalty;
19 and

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

22 SECTION 28. Section 1101.704, Occupations Code, is amended
23 to read as follows:

24 Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
25 Not later than the 20th day after the date the person receives the
26 notice under Section 1101.703, the person may:

27 (1) accept the administrator's determination,

1 including the recommended administrative penalty; or

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

4 (b) If the person accepts the administrator's
5 determination, or fails to respond in a timely manner to the notice,
6 the commission by order shall approve the determination and order
7 payment of the recommended penalty or impose the recommended
8 sanction.

9 SECTION 29. The heading to Section 1101.705, Occupations
10 Code, is amended to read as follows:

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

12 SECTION 30. Sections 1101.705(a), (b), (c), and (e),
13 Occupations Code, are amended to read as follows:

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

17 (b) An administrative law judge of the State Office of
18 Administrative Hearings [~~A hearings examiner designated by the~~
19 ~~administrator~~] shall conduct the hearing. The administrative law
20 judge [~~hearings examiner~~] shall:

21 (1) make findings of fact and conclusions of law; and

22 (2) promptly issue to the commission a proposal for
23 decision regarding the occurrence of the violation and the amount
24 of any proposed administrative penalty.

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

1 (1) a violation occurred and impose an administrative
2 penalty; or

3 (2) a violation did not occur.

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

9 SECTION 31. Section 1101.707, Occupations Code, is amended
10 to read as follows:

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

14 (1) pay the administrative penalty; or

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

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

21 (1) stay enforcement of the penalty by:

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

24 (B) [~~(2)~~] giving the court [~~administrator~~] a
25 supersedeas bond in a form approved by the court [~~administrator~~]
26 that:

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

1 and

2 (ii) [(B)] is effective until judicial
3 review of the order is final; or

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

5 (A) [(3)] filing with the court [~~administrator~~]
6 an affidavit of the person stating that the person is financially
7 unable to pay the penalty and is financially unable to give the
8 supersedeas bond; and

9 (B) giving a copy of the affidavit to the
10 administrator by certified mail.

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

17 (d) The court shall hold a hearing on the facts alleged in
18 the affidavit as soon as practicable and shall stay the enforcement
19 of the penalty on finding that the alleged facts are true. The
20 person who files an affidavit has the burden of proving that the
21 person is financially unable to pay the penalty and to give a
22 supersedeas bond.

23 SECTION 32. Subchapter O, Chapter 1101, Occupations Code,
24 is amended by adding Section 1101.7085 to read as follows:

25 Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court
26 sustains the determination that a violation occurred, the court may
27 uphold or reduce the amount of the administrative penalty and order

1 the person to pay the full or reduced amount of the penalty.

2 (b) If the court does not sustain the finding that a
3 violation occurred, the court shall order that a penalty is not
4 owed.

5 SECTION 33. Section 1101.709, Occupations Code, is amended
6 to read as follows:

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

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

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

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

17 (c) The interest shall be paid for the period beginning on
18 the date the penalty is paid and ending on the date the penalty is
19 remitted.

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

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

26 SECTION 34. Subchapter O, Chapter 1101, Occupations Code,
27 is amended by adding Section 1101.710 to read as follows:

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

3 SECTION 35. Subchapter P, Chapter 1101, Occupations Code,
4 is amended by adding Section 1101.759 to read as follows:

5 Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears
6 to the commission that a person is violating this chapter or Chapter
7 1102 or a rule adopted under this chapter or Chapter 1102, the
8 commission, after notice and opportunity for a hearing, may issue a
9 cease and desist order prohibiting the person from engaging in the
10 activity.

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

13 SECTION 36. Section 1102.051(a), Occupations Code, is
14 amended to read as follows:

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

17 SECTION 37. Section 1102.205, Occupations Code, is amended
18 to read as follows:

19 Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS. (a) The
20 commission shall approve, recognize, prepare, or administer a
21 continuing education program for inspectors.

22 (b) As a prerequisite for renewal of a real estate inspector
23 license, professional inspector license, or apprentice inspector
24 license, the inspector must participate in the continuing education
25 program and submit evidence satisfactory to the commission of
26 successful completion of at least 16 classroom hours of core real
27 estate inspection courses or continuing education courses for each

1 year of the license period preceding the renewal.

2 SECTION 38. Section 1102.251, Occupations Code, is amended
3 to read as follows:

4 Sec. 1102.251. [~~AMOUNT OF~~] FEES. The commission shall
5 charge and collect reasonable and necessary fees to cover the cost
6 of administering this chapter for [~~as follows~~]:

7 (1) [~~for~~] filing an original application for an
8 apprentice inspector license [~~, not more than \$75~~];

9 (2) [~~for~~] filing an original application for a real
10 estate inspector license [~~, not more than \$125~~];

11 (3) [~~for~~] filing an original application for a
12 professional inspector license [~~, not more than \$150~~];

13 (4) [~~for~~] renewal of an apprentice inspector license [~~,
14 not more than \$125~~];

15 (5) [~~for~~] renewal of a real estate inspector license [~~,
16 not more than \$175~~];

17 (6) [~~for~~] renewal of a professional inspector
18 license [~~, not more than \$200~~];

19 (7) [~~for~~] a license examination [~~, not more than \$100~~];

20 (8) [~~for~~] a request to change a place of business or to
21 replace a lost or destroyed license [~~, not more than \$20~~]; and

22 (9) [~~for~~] filing a request for issuance of a license
23 because of a change of name, return to active status, or change in
24 sponsoring professional inspector [~~, not more than \$20~~].

25 SECTION 39. The heading to Subchapter I, Chapter 1102,
26 Occupations Code, is amended to read as follows:

1 SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND

2 ENFORCEMENT PROVISIONS

3 SECTION 40. Subchapter I, Chapter 1102, Occupations Code,
4 is amended by adding Section 1102.408 to read as follows:

5 Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding
6 officer of the commission shall appoint a disciplinary panel
7 consisting of three commission members to determine whether a
8 person's license to practice under this chapter should be
9 temporarily suspended.

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

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

17 (1) institution of proceedings for a hearing before
18 the commission is initiated simultaneously with the temporary
19 suspension; and

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

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

26 SECTION 41. Section 1103.101(a), Occupations Code, is
27 amended to read as follows:

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

3 SECTION 42. Section 1103.103(a), Occupations Code, is
4 amended to read as follows:

5 (a) The administrator of the Texas Real Estate Commission
6 [~~board~~] shall determine the salaries of the [~~commissioner,~~]
7 officers[~~7~~] and employees of the board.

8 SECTION 43. Section 1103.104, Occupations Code, is amended
9 to read as follows:

10 Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner
11 shall:

12 (1) disseminate information;

13 (2) administer rules adopted by the board under this
14 chapter;

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

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

19 (A) the examination required by Subchapter F;

20 (B) education and experience requirements for
21 issuance of certificates and licenses;

22 (C) continuing education for a certified or
23 licensed appraiser;

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

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

1 (F) the fees established by the board under
2 Section 1103.156;

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

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

5 (7) perform any other duty prescribed by the board
6 under this chapter.

7 SECTION 44. Section 1103.504, Occupations Code, is amended
8 to read as follows:

9 Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The
10 attorney general ~~[shall provide legal representation for the public~~
11 ~~interest in all proceedings before the board and]~~ may not represent
12 the board in a contested case before the State Office of
13 Administrative Hearings ~~[board]~~.

14 SECTION 45. Sections 1103.508(a) and (d), Occupations Code,
15 are amended to read as follows:

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

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

21 (1) administer oaths;

22 (2) admit or exclude testimony or other evidence; and

23 (3) rule on all motions and objections.

24 SECTION 46. Section 1103.510(a), Occupations Code, is
25 amended to read as follows:

26 (a) If an appraiser or appraiser trainee receives proper
27 notice of a contested case hearing but does not appear in person at

1 the hearing, the administrative law judge [~~board and presiding~~
2 ~~officer~~] may conduct the hearing or enter an order, as the judge
3 [~~board~~] determines appropriate.

4 SECTION 47. Section 1103.512(c), Occupations Code, is
5 amended to read as follows:

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

7 (1) show the identities of:

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

9 (B) the administrative law judge [~~presiding~~
10 ~~officer~~]; and

11 (C) the parties and their representatives; and

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

13 SECTION 48. Section 1103.513, Occupations Code, is amended
14 to read as follows:

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

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

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

26 (3) the appraiser or appraiser trainee may make an
27 opening statement, including the names of any witnesses the

1 appraiser or appraiser trainee may call;

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

4 (5) the appraiser or appraiser trainee shall present
5 evidence;

6 (6) the attorney representing the board may present
7 rebuttal evidence;

8 (7) the appraiser or appraiser trainee may present
9 rebuttal evidence; and

10 (8) the closing arguments shall be made in the
11 following order:

12 (A) the attorney representing the board;

13 (B) the appraiser or appraiser trainee; and

14 (C) the attorney representing the board on
15 rebuttal.

16 SECTION 49. Section 1103.516, Occupations Code, is amended
17 to read as follows:

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

22 SECTION 50. Section 1103.518, Occupations Code, is amended
23 to read as follows:

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

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

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

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

7 (B) suspend or revoke the appraiser's
8 certificate or license or the appraiser trainee's approval;

9 (C) impose a period of probation with or without
10 conditions;

11 (D) require the appraiser to submit to
12 reexamination for a certificate or license;

13 (E) require the appraiser or appraiser trainee to
14 participate in additional professional education or continuing
15 education;

16 (F) issue a public or private reprimand or a
17 warning;

18 (G) issue a consent order; or

19 (H) impose an administrative penalty as
20 prescribed by Section 1103.552.

21 SECTION 51. Section 1103.520(c), Occupations Code, is
22 amended to read as follows:

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

25 (1) the facts arose after the original hearing was
26 concluded;

27 (2) the party offering the evidence could not

1 reasonably have provided the evidence at the original hearing; or

2 (3) the party offering the evidence was misled by a
3 party regarding the necessity for offering the evidence at the
4 original hearing.

5 SECTION 52. Section 1103.521(a), Occupations Code, is
6 amended to read as follows:

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

10 SECTION 53. Sections 1303.052(a) and (b), Occupations Code,
11 are amended to read as follows:

12 (a) A residential service company must pay to the commission
13 a fee for filing an application for a license or an amendment to the
14 application[~~, not to exceed \$3,500~~].

15 (b) A residential service company shall pay to the
16 commission a fee for:

17 (1) filing an annual report under Section 1303.202[~~, not to exceed \$3,500~~]; and

18 (2) any other filing required by this chapter[~~, not to~~
19 ~~exceed \$500~~].

20 SECTION 54. Subchapter H, Chapter 1303, Occupations Code,
21 is amended by adding Sections 1303.355 and 1303.356 to read as
22 follows:
23

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

1 (b) The amount of an administrative penalty may not exceed
2 \$5,000 for each violation. Each day a violation continues or occurs
3 may be considered a separate violation for purposes of imposing a
4 penalty.

5 (c) In determining the amount of the penalty, the
6 administrator shall consider:

7 (1) the seriousness of the violation, including the
8 nature, circumstances, extent, and gravity of the violation;

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

10 (3) the history of previous violations;

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

12 (5) efforts to correct the violation; and

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

14 (d) The commission by rule shall adopt a schedule of
15 administrative penalties based on the criteria listed in Subsection
16 (c) for violations subject to an administrative penalty under this
17 section to ensure that the amount of a penalty imposed is
18 appropriate to the violation.

19 Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding
20 officer of the commission shall appoint a disciplinary panel
21 consisting of three commission members to determine whether a
22 person's license to practice under this chapter should be
23 temporarily suspended.

24 (b) If the disciplinary panel determines from the
25 information presented to the panel that a person licensed to
26 practice under this chapter would, by the person's continued
27 practice, constitute a continuing threat to the public welfare, the

1 panel shall temporarily suspend the license of that person.

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

4 (1) institution of proceedings for a hearing before
5 the commission is initiated simultaneously with the temporary
6 suspension; and

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

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

13 SECTION 55. Subchapter C, Chapter 221, Property Code, is
14 amended by adding Section 221.027 to read as follows:

15 Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding
16 officer of the commission shall appoint a disciplinary panel
17 consisting of three commission members to determine whether the
18 registration for a timeshare plan under this chapter should be
19 temporarily suspended.

20 (b) If the disciplinary panel determines from the
21 information presented to the panel that a timeshare plan registered
22 under this chapter would, by the continued disposition of the
23 timeshare property, constitute a continuing threat to the public
24 welfare, the panel shall temporarily suspend the registration of
25 the timeshare plan.

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

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

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

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

10 SECTION 56. The following provisions of the Occupations
11 Code are repealed:

- 12 (1) Section 1101.204(g);
- 13 (2) Sections 1101.364(c), (d), and (e);
- 14 (3) Sections 1101.657(b), (c), and (d);
- 15 (4) Section 1101.703(b);
- 16 (5) Sections 1102.051(b), (c), and (d);
- 17 (6) Section 1102.052;
- 18 (7) Section 1102.053;
- 19 (8) Section 1102.054;
- 20 (9) Section 1102.055;
- 21 (10) Section 1102.056;
- 22 (11) Section 1102.057;
- 23 (12) Section 1102.058(a);
- 24 (13) Section 1102.059;
- 25 (14) Section 1102.061;
- 26 (15) Section 1102.062; and
- 27 (16) Section 1103.508(c).

1 SECTION 57. (a) Not later than January 1, 2008, the Texas
2 Real Estate Commission shall:

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

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

7 (b) As soon as practicable after the effective date of this
8 Act, the administrator of the Texas Real Estate Commission shall
9 assume the administrative and management duties over the Texas
10 Appraiser Licensing and Certification Board, as required by
11 Sections 1103.101 and 1103.104, Occupations Code, as amended by
12 this Act.

13 SECTION 58. (a) The changes in law made by this Act to
14 Section 1101.053, Occupations Code, regarding the prohibitions on
15 or qualifications of members of the Texas Real Estate Commission do
16 not affect the entitlement of a member serving on the commission
17 immediately before September 1, 2007, to continue to serve and
18 function as a member of the commission for the remainder of the
19 member's term. The changes in law made by that section apply only
20 to a member appointed on or after September 1, 2007.

21 (b) The changes in law made by this Act regarding the
22 filing, investigation, or resolution of a complaint under Chapter
23 1101, Occupations Code, as amended by this Act, apply only to a
24 complaint filed with the Texas Real Estate Commission on or after
25 the effective date of this Act. A complaint filed before the
26 effective date of this Act is governed by the law as it existed
27 immediately before that date, and the former law is continued in

1 effect for that purpose.

2 (c) The change in law made by this Act regarding conduct
3 that is grounds for imposition of a disciplinary sanction,
4 including a refund, temporary license suspension, or cease and
5 desist order, applies only to conduct that occurs on or after the
6 effective date of this Act. Conduct that occurs before the
7 effective date of this Act is governed by the law in effect on the
8 date the conduct occurred, and the former law is continued in effect
9 for that purpose.

10 (d) The changes in law made by this Act regarding the
11 procedure for an administrative penalty apply only to a proceeding
12 commenced on or after the effective date of this Act. A proceeding
13 commenced before the effective date of this Act is governed by the
14 law in effect on the date the proceeding commenced, and the former
15 law is continued in effect for that purpose.

16 (e) The change in law made by this Act regarding the renewal
17 of an expired license applies only to a license that expires on or
18 after the effective date of this Act. A license that expires before
19 the effective date of this Act is governed by the law in effect on
20 the date the license expired, and the former law is continued in
21 effect for that purpose.

22 (f) The change in law made by this Act regarding
23 accreditation standards for educational programs under Chapter
24 1101, Occupations Code, as amended by this Act, applies only to an
25 accreditation granted or renewed on or after September 1, 2009. An
26 educational program renewing an accreditation on or after the
27 effective date of this Act but before September 1, 2009, should

1 strive to meet the new accreditation standards under Chapter 1101,
2 Occupations Code, as amended by this Act, but an accreditation
3 granted or renewed before September 1, 2009, is governed by the law
4 in effect on the date the accreditation expired, and the former law
5 is continued in effect for that purpose.

6 (g) The change in law made by this Act to the authority of
7 the Texas Real Estate Inspector Committee to develop and recommend
8 rules under Chapter 1102, Occupations Code, as amended by this Act,
9 applies only to a rule proposed for adoption on or after the
10 effective date of this Act. A rule proposed for adoption before the
11 effective date of this Act is governed by the law in effect on the
12 date the rule was proposed for adoption, and the former law is
13 continued in effect for that purpose.

14 SECTION 59. This Act takes effect September 1, 2007.