

House Bill 1530
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 1101.005, Occupations Code, is amended to read as follows:

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) an attorney licensed in any state;
- (2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;
- (3) a public official while engaged in official duties;
- (4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;
- (5) a person conducting a real estate transaction [~~acting~~] under a court order or the authority of a will or written trust instrument;
- (6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;
- (7) an on-site manager of an apartment complex;
- (8) an owner or the owner's employee who leases the owner's improved or unimproved real estate;
- (9) a partnership or limited liability partnership acting as a broker or salesperson through a partner who is a licensed broker; or
- (10) a transaction involving:
 - (A) the sale, lease, or transfer of a mineral or mining interest in real property;
 - (B) the sale, lease, or transfer of a cemetery lot;
 - (C) the lease or management of a hotel or motel; or

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(D) the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

SECTION 2. Section 1101.057(a), Occupations Code, is amended to read as follows:

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

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

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

(3) violates a prohibition established by Section 1101.053;

(4) cannot~~[, because of illness or disability,]~~ discharge the member's duties for a substantial part of the member's term; or

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

Same as House version.

SECTION 3. Section 1101.204(g), Occupations Code, is amended to read as follows:

(g) The commission may authorize a commission employee to file a signed, written complaint against a person licensed under this chapter or Chapter 1102 and

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to conduct an investigation if:

- (1) a judgment against the person has been paid from the real estate recovery trust account under this chapter or the real estate inspection recovery fund under Chapter 1102;
- (2) the person is convicted of a criminal offense that may constitute grounds for the suspension or revocation of the person's license;
- (3) the person fails to honor a check issued to the commission;
- (4) the person fails to pay the fee and complete required continuing education within the period prescribed by commission rules adopted under Section 1101.457; or
- (5) the person fails to provide, within a reasonable time, information:
 - (A) requested by the commission in connection with an application to renew a license; or
 - (B) required under Section 1101.652(a)(9).

No equivalent provision.

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SECTION 3. Section 1101.152(a), Occupations Code, is amended to read as follows:

- (a) The commission shall adopt rules to charge and collect reasonable fees, including a fee for ~~[the following fees]~~:
- (1) ~~[for]~~ filing an original application for a broker license~~[-not more than \$100]~~;
 - (2) ~~[for]~~ annual renewal of a broker license~~[-not more than \$100]~~;
 - (3) ~~[for]~~ filing an original application for a salesperson

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license~~[, not more than \$75]~~;

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

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

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

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

(8) ~~[for]~~ filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker~~[, not more than \$20]~~;

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

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

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

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

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

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

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

(16) conducting a criminal history check for issuing or renewing a license~~[, not more than \$50]~~.

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SECTION 4. Section 1101.302(b), Occupations Code, is amended to read as follows:

(b) An educational institution shall maintain a corporate surety bond or other security acceptable to the commission that is:

- (1) in the amount of \$20,000 [~~\$10,000~~];
- (2) payable to the commission; and
- (3) for the benefit of a party who suffers damages caused by the failure of the institution to fulfill obligations related to the commission's approval.

No equivalent provision.

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SECTION 5. Subchapter H, Chapter 1101, Occupations Code, is amended by adding Section 1101.3521 to read as follows:

Sec. 1101.3521. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a)

The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a

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license using information:

(1) provided by the individual under this section; and
(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

SECTION 5. Section 1101.356(a), Occupations Code, is amended to read as follows:

(a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least two years of active experience in this state as a license holder during the 36 months preceding the date the application is filed; and

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of core real estate courses, two semester hours of which must be real estate brokerage; and

(B) at least 42 hours of core real estate courses or related courses accepted by the commission.

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No equivalent provision.

SECTION 6. Section 1101.455, Occupations Code, is amended by adding Subsection (k) to read as follows:
(k) Notwithstanding the number of hours required by Subsection (e), a member of the legislature licensed under this chapter is only required to complete three hours of continuing education on the legal topics under Subsection (e).

SECTION 7. Section 1101.652(a), Occupations Code, is amended to read as follows:
(a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:
(1) enters a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

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SECTION 7. Subchapter J, Chapter 1101, Occupations Code, is amended by adding Section 1101.4521 to read as follows:
Sec. 1101.4521. CRIMINAL HISTORY RECORD INFORMATION FOR RENEWAL. An applicant for the renewal of an unexpired license must comply with the criminal history record check requirements of Section 1101.3521.

SECTION 8. Same as House version.

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- (2) procures or attempts to procure a license under this chapter for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;
- (3) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of:
 - (A) the license holder;
 - (B) the license holder's spouse; or
 - (C) a person related to the license holder within the first degree by consanguinity;
- (4) fails to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the license holder's last known business address according to commission records;
- (5) fails or refuses to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder;
- (6) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter;
- (7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;
- (8) fails to use a contract form required by the commission under Section 1101.155;

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- (9) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud; or
- (10) disregards or violates this chapter.

SECTION 8. Section 1101.655(a), Occupations Code, is amended to read as follows:

- (a) The commission may revoke a license, approval, or ~~[certificate of]~~ registration issued under this chapter or Chapter 1102 if the commission makes a payment from the real estate recovery trust account to satisfy all or part of a judgment against the license or registration ~~[certificate]~~ holder.

SECTION 9. Section 1102.054(a), Occupations Code, is amended to read as follows:

- (a) The commission may remove a committee member if the member:
- (1) does not have at the time of appointment the qualifications required by Section 1102.051;
 - (2) cannot~~[, because of illness or disability,]~~ discharge the member's duties for a substantial part of the member's term; or
 - (3) is absent from more than half of the regularly scheduled committee meetings that the member is

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eligible to attend during each year unless the absence is excused by the committee.

SECTION 10. Section 1102.111, Occupations Code, is amended to read as follows:

Sec. 1102.111. SUBSTITUTE REQUIREMENTS. (a) The commission by rule shall provide for substitution of relevant experience and ~~[or]~~ additional education in place of:

(1) the number of real estate inspections required for licensing; and

(2) the requirement that an applicant be:

(A) licensed as an apprentice inspector before being licensed as a real estate inspector; or

(B) licensed as a real estate inspector before being licensed as a professional inspector.

(b) Rules adopted under Subsection (a) may not require an applicant to:

(1) complete more than 320 additional classroom hours of core real estate inspection courses; or

(2) have more than seven years of relevant experience.

SECTION 11. Sections 1102.402(a) and (c), Occupations Code, are amended to read as follows:

(a) The commission may revoke a ~~[the]~~ license issued under this chapter or a license, approval, or registration issued under Chapter 1101 ~~[of an inspector]~~ if the commission makes a payment from the real estate

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SECTION 11. Same as House version.

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inspection recovery fund to satisfy all or part of a judgment against the person issued the license, approval, or registration ~~[inspector]~~.

(c) A person ~~[whose license is revoked under this section]~~ is not eligible for a ~~[new]~~ license until the person has repaid in full the amount paid from the fund on the person's account, plus interest at the legal rate.

SECTION 12. Section 1303.302, Occupations Code, is amended to read as follows:

Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY PROHIBITED. (a) A seller of a residential property or the buyer's or seller's agent may not condition the sale of the property on the buyer's purchase of a residential service contract.

(b) A seller of a residential property or the buyer's or seller's agent shall provide to the buyer a statement that clearly and conspicuously states that:

(1) the purchase of a residential service contract is optional; and

(2) the buyer may purchase similar coverage through another residential service company or insurance company authorized to engage in business in this state.

SECTION 13. Sections 1102.1035 and 1102.2051, Occupations Code, are repealed.

SECTION 14. Not later than January 1, 2008, an

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SECTION 13. Same as House version.

SECTION 14. Same as House version.

SECTION 15. Same as House version.

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educational institution that maintains a bond under Section 1101.302(b), Occupations Code, on the effective date of this Act shall obtain a bond in the amount required by Section 1101.302(b), Occupations Code, as amended by this Act.

No equivalent provision.

SECTION 15. The change in law made by this Act to Section 1101.356(a), Occupations Code, applies only to a license application filed on or after January 1, 2008. A license application filed before that date is covered by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

SECTION 16. This Act takes effect September 1, 2007.

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SECTION 16. Not later than January 1, 2008, the Texas Real Estate Commission shall adopt rules as required by Section 1101.152, Occupations Code, as amended by this Act.

SECTION 17. (a) The change in law made by this Act to Section 1101.356(a), Occupations Code, applies only to a license application filed on or after January 1, 2008. A license application filed before that date is covered by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(b) The requirement that a person applying for or renewing a license under Chapter 1101, Occupations Code, must submit to a criminal history check under Sections 1101.3521 and 1101.4521, Occupations Code, as added by this Act, applies only to an application filed on or after January 1, 2008.

SECTION 18. Same as House version.

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