

BILL ANALYSIS

C.S.H.B. 3738

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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current Texas law, a person seeking to gain or renew a license as a real estate broker, salesperson, or inspector may take one of many correspondence courses offered by numerous organizations. While the correspondence courses are required to be offered through an institution of higher education, there is sometimes little incentive for the institution to oversee a thorough and standardized course. Over the years, some of these programs have been supervised by administrative divisions rather than academic departments of institutions and have deteriorated due to this lack of academic oversight. Some institutions have, in reality, merely sold the institution's naming rights to the private vendor conducting the course.

Measures need to be taken to protect existing quality programs while closing loopholes that allow correspondence courses to be sold without any oversight or supervision from the participating institution. This will provide Texas consumers with quality correspondence real estate course programs.

C.S.H.B. 3738 requires an educational institution to hold a certificate of registration from the Texas Real Estate Commission in order for its correspondence course or program to be acceptable as a core real estate course or continuing education course. The bill sets forth minimum standards for the course structure and course assessment processes. The bill makes a participating institution responsible for the marketing of a correspondence course. The bill sets out measures requiring academic department review to ensure that content, quality, and standards comply with laws and commission rules.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3738 amends the Occupations Code to provide that a correspondence course is not acceptable as a core real estate course or continuing education course, under the Real Estate License Act or a core real estate inspection course or continuing education course under the law relating to real estate inspectors, unless the educational institution offering the course holds a certificate of registration issued by the Texas Real Estate Commission.

C.S.H.B. 3738 provides that an educational institution may submit an application to hold a certificate of correspondence course registration by applying to the commission. The bill describes the information required to be included in the application. The bill requires an educational institution that holds a certificate of registration to notify the commission of any changes to the information provided in an application not later than 30 days after the date of the change. The bill requires the commission to issue a certificate of registration to an institution that meets applicable statutory requirements and commission rules and prohibits the commission from unreasonably denying the issuance of a certificate of registration to an otherwise eligible institution. The bill authorizes the commission to issue or renew a certificate of registration for a

period not to exceed 24 months, and to charge a fee for the issuance of a certificate in an amount that is reasonable and necessary to cover costs of administration.

C.S.H.B. 3738 requires a registered educational institution to submit a letter to the commission for approval, on institution letterhead and signed by a specified representative, describing the correspondence course or program it offers. The bill requires the commission, on receipt of the letter, to add an approved correspondence course or program of study to its list of approved correspondence courses or programs for that educational institution. The bill prohibits a registered educational institution from submitting a correspondence course or program of study to the commission for approval unless the course or program has been reviewed by a member of the institution's academic department. The bill requires the person reviewing the course or program to examine the content, educational quality, and standards of the course or program to ensure that the course or program complies with applicable statutory requirements and commission rules.

C.S.H.B. 3738 describes required elements of a correspondence course. The bill requires a registered educational institution that offers as a correspondence course a core real estate course covering law of agency, contract law, or the principles of real estate to select a textbook for the course from the commission's list of acceptable published textbooks. The bill requires the institution to establish reasonable procedures to ensure that a student who completes the work for a correspondence course is the student who is enrolled in the course. The bill requires a student enrolled in an authorized correspondence course, on completion of the course and before credit is granted for the course, to attest in a written statement submitted to the educational institution that the person enrolled in and receiving credit for the course is the same person who completed the required course work. The bill prohibits an educational institution from issuing a correspondence course completion certificate through the use of a computer printout generated by a computer course program on completion of the course.

C.S.H.B. 3738 prohibits an educational institution from offering a correspondence course unless the final examination questions for the course differ significantly from the questions used in the diagnostic assessments for the course and are kept confidential. The bill specifies that the confidentiality provision does not prohibit a student from reviewing, under controlled conditions, a final examination taken by the student after the examination has been graded. The bill authorizes a final examination for a correspondence course to be conducted as an open or closed book examination. The bill prohibits course credit from being granted for the course unless a student completes all diagnostic assessments and successfully completes a proctored final examination meeting specified criteria, including a means to verify the student's identity.

C.S.H.B. 3738 requires a registered educational institution to cooperate with the commission to maintain the highest educational standards for real estate education. The bill authorizes the commission to suspend or revoke an educational institution's certificate of registration if the institution does not supervise a correspondence course or program or if a correspondence course does not comply with the minimum correspondence course standards established by statutory provisions or commission rules. The bill requires a representative of a registered educational institution to sign an agreement to maintain the ethical and academic standards required by the commission for correspondence courses and programs of study. The bill prohibits an educational institution from entering into a business relationship with an outside provider that authorizes the provider to offer a correspondence course that uses the name of the institution for a fee without any additional institutional involvement in the creation or administration of the course, or that uses an unapproved textbook for a mandatory prelicensing core real estate course. The bill makes an educational institution that outsources the creation, administration, or marketing of a correspondence course or program of study to an outside provider or subcontractor responsible for the actions of the provider or subcontractor.

C.S.H.B. 3738 requires a registered institution, in any print or electronic advertisement of an approved correspondence course, to ensure that the institution's name or logo is prominently

displayed in a manner that adequately informs the consumer which institution is offering the course. The bill prohibits a licensed broker, salesperson, or inspector from participating in a student recruiting scheme that advertises a real estate correspondence course or program of study in a manner that compromises the integrity of the course or program, either by suggesting the course or program may be completed in less time than the number of credit hours granted for successful completion of the course or program or by providing answer keys to diagnostic assessments or final examinations.

C.S.H.B. 3738 requires the commission to adopt rules requiring a registered educational institution to establish the program's graduate licensing examination passage rate.

C.S.H.B. 3738 defines "educational institution" and "correspondence course."

C.S.H.B. 3738 requires the commission to adopt rules to implement the provisions of the bill not later than January 1, 2010, and specifies that an educational institution providing a real estate correspondence course or program of study is not required to comply with provisions of the bill before September 1, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3738 modifies the definition of "educational institution" in the original by specifying that the term applies to an institution offering a real estate program if the program is offered using a third-party marketing firm. The substitute adds a provision not in the original to define the term "correspondence course."

C.S.H.B. 3738 removes a provision in the original that requires an educational institution to provide in an application for a certificate of correspondence course registration information and evidence to demonstrate that its accreditation authorizes the institution to offer noncredit adult education programs.

C.S.H.B. 3738 differs from the original by prohibiting an educational institution from offering a correspondence course unless the institution provides each student with printed copies of material that constitutes a significant portion of the course, rather than printed copies of any material other than a textbook that constitutes a significant portion of the course as in the original.

C.S.H.B. 3738 removes language in the original that requires a student, on completion of a correspondence course, to submit a written statement to the Texas Real Estate Commission attesting that the person enrolled in and receiving credit for the course is the same person who completed the required course work.

C.S.H.B. 3738 differs from the original by specifying that the commission is authorized to suspend or revoke the certificate of registration of an educational institution if the institution does not supervise a correspondence course or program, rather than a noncredit real estate course as in the original.

C.S.H.B. 3738 differs from the original by specifying that an educational institution is prohibited from entering into a business relationship with an outside provider in which the provider offers a correspondence course that uses an unapproved textbook for a mandatory prelicensing core real estate course, rather than for core real estate courses or core real estate inspection courses as in the original.

C.S.H.B. 3738 differs from the original by requiring a registered educational institution to establish a program's graduate licensing examination passage rate, rather than requiring an institution to establish that at least 55 percent of a program's graduates passed the licensing examination the first time the examination was taken by the graduates before the commission is authorized to renew the program's certificate of registration as in the original.