

BILL ANALYSIS

C.S.S.B. 747
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some interested parties assert that provisions of law regulating real estate brokers and salespersons need revision to address various issues, including broker and salesperson licensing, broker responsibility, right-of-way agents, and educational programs for licensees. C.S.S.B. 747 makes such revisions to those provisions of law.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTIONS 4, 8, 18, and 25 of this bill.

ANALYSIS

C.S.S.B. 747 amends the Occupations Code to specify that provisions of The Real Estate License Act do not apply to an attorney licensed in Texas, rather than an attorney licensed in any state, and to remove as an entity to which those provisions do not apply a partnership or limited liability partnership acting as a real estate broker or salesperson through a partner who is a licensed real estate broker. The bill authorizes the Texas Real Estate Commission (TREC) to solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under provisions of the act or provisions of law governing real estate inspectors or real estate appraisers.

C.S.S.B. 747 specifies that the rules required to be adopted by the TREC in establishing accreditation standards for educational programs in real estate and real estate inspection are for setting an examination passage rate benchmark for each category of license issued by the TREC under the act or provisions governing real estate inspectors. The bill requires the benchmark to be based on the average percentage of examinees that pass the licensing exam on the first attempt and requires such an educational program to meet or exceed the benchmark for each license category before the TREC may renew the program's accreditation for the license category. The bill requires the TREC to adopt rules to implement these requirements not later than December 1, 2011. The bill removes a provision requiring the TREC, before it may renew the program's accreditation, to adopt rules that require such a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates. The bill authorizes the TREC to deny an application for accreditation if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which accreditation was revoked.

C.S.S.B. 747 prohibits a business entity from acting as a broker unless the business entity holds a license issued under The Real Estate License Act. The bill requires each applicant for a broker or salesperson license, at the time the application is submitted, to provide the TREC with the applicant's current mailing address and telephone number, and e-mail address if available, and to notify the TREC of any change in that information during the time the application is pending.

C.S.S.B. 747 establishes as additional eligibility requirements for an original or renewal real

estate broker or salesperson license for a business entity that the business entity designate one of its managing officers as its agent for purposes of The Real Estate License Act, rather than requiring a corporation to designate one of its officers as its agent and a limited liability company to designate one of its managers as its agent for such purposes. The bill adds as a condition for eligibility for an original or renewal license that the entity provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity. The bill establishes, in provisions relating to additional eligibility requirements for an original or renewal license, that a business entity, rather than a corporation or limited liability company, is prohibited from acting as a broker unless the entity's designated agent is a licensed broker in active status and in good standing according to the TREC's records. The bill requires a business entity that receives compensation on behalf of a license holder to be licensed as a broker under the act.

C.S.S.B. 747 changes the amount of active experience in Texas as a licensed broker or salesperson an applicant for a broker license must provide to the TREC as satisfactory evidence of experience from at least two years of active experience during the 36 months preceding the date the application is filed to four years of active experience during the 60 months preceding that date. The bill makes the same change to the amount of alternate experience a licensed real estate broker in another state must provide to the TREC as satisfactory evidence of active experience in that state when applying for a broker license in Texas. The bill makes these changes relating to the required amount of active experience and alternate experience applicable only to an application for a real estate broker license submitted to the TREC on or after January 1, 2012. The bill authorizes a person who holds a real estate broker license issued before the bill's effective date to continue to renew the license without complying with these provisions relating to experience and education requirements for such a license. The bill requires the TREC by rule, not later than December 1, 2011, to establish what constitutes active experience for purposes of eligibility for a broker license and requires the TREC to adopt rules to implement that requirement.

C.S.S.B. 747 decreases from 14 hours to 12 hours the minimum number of semester or classroom hours of postsecondary education an applicant for a real estate salesperson license must complete and show satisfactory evidence of the completion to the TREC. The bill specifies that such hours consist of, rather than include, a specified number of hours of certain courses. The bill specifies in the requirement that the applicant complete at least two semester hours of each of certain core real estate courses that those courses include contract forms and addendums and real estate finance and removes the requirement that those courses include one additional core real estate course and the requirement that the applicant complete at least four semester hours of core real estate courses or related courses. The bill decreases from one year to six months the length of time that the TREC is required to waive the education requirements for a salesperson license if the applicant had been licensed in Texas as a broker or salesperson within that period preceding the date the application is filed. The bill specifies that if an applicant for a salesperson license was licensed as a salesperson within the six months, rather than within one year, preceding the date the application is filed and the license was issued as a renewal, the TREC is required to require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months, rather than during the preceding year. The bill makes these provisions relating to education requirements applicable only to an application for a real estate salesperson license submitted to the TREC on or after September 1, 2012. The bill makes conforming changes.

C.S.S.B. 747 extends the deadline for an applicant for a real estate broker or salesperson license to satisfy the examination requirement from six months to one year after the date the license application is filed. The bill reduces from one year to six months after the expiration of a license the maximum amount of time a license has been expired for the license holder to be able to renew the license by paying the TREC the required fee and prohibits a person from renewing an

expired license if the license has been expired for at least six months, rather than at least one year.

C.S.S.B. 747 specifies that the required 18 semester hours or equivalent classroom hours associated with the first renewal of a salesperson license consists of core real estate courses, rather than specifying that those required hours include 14 hours of such courses, removes the specification that those hours be postsecondary education, and makes this provision applicable only to the renewal of a real estate salesperson license that expires on or after September 1, 2012.

C.S.S.B. 747 requires a broker who sponsors a salesperson, or a license holder who supervises another license holder, to attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the TREC. The bill requires the TREC by rule to prescribe the title, content, and duration of those additional courses and requires the TREC, not later than December 1, 2011, to adopt rules to implement this requirement. The bill authorizes the hours for the additional courses to be used to satisfy nine hours of the continuing education requirement in real estate-related topics approved by the TREC. The bill specifies that these provisions of the bill relating to additional education requirements do not apply to a broker who is exempt from continuing education requirements and are only applicable to a license issued or renewed on or after September 1, 2012.

C.S.S.B. 747 requires a business entity, for eligibility to receive an original or renewal certificate of registration to sell, buy, lease, or transfer an easement or right-of-way for another, to designate as its agent one of its managing officers who is registered for such a certificate. The bill removes the provision requiring a corporation, limited liability company, partnership, limited liability partnership, or other entity, for eligibility for such a certificate, to designate as its agent one of its officers, partners, or managers who is registered for such a certificate. The bill requires an applicant for an original or renewal certificate of registration to comply with the criminal history record check requirements for a real estate broker or salesperson license. The bill makes these requirements applicable only to an application for an original or renewal certificate of registration filed with the TREC on or after December 1, 2011.

C.S.S.B. 747 requires the holder of a real estate broker or salesperson license to provide the TREC with the license holder's current mailing address and telephone number, and e-mail address if available, and to notify the TREC of a change in that information. The bill makes these requirements applicable only to a broker or salesperson license issued or renewed on or after December 1, 2011. The bill specifies that the TREC is required to deliver or mail a copy of each salesperson license, rather than each salesperson license, to the broker with whom the salesperson is associated and removes the requirement that the broker keep the license under the broker's custody and control. The bill authorizes the TREC to suspend or revoke an accreditation of real estate educational programs and courses of study or take any other disciplinary action authorized by The Real Estate License Act if the provider of an educational program or course of study violates the act or a rule adopted under the act.

C.S.S.B. 747 redefines "broker" to remove from the list of activities performed by a broker for another person the appraising or offering, attempting, or agreeing to appraise real estate and adds to that list of activities the controlling of the acceptance or deposit of rent from a resident of a single-family residential real property unit and the providing of a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion is not referred to as an appraisal, is provided in the ordinary course of the person's business, and is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property. The bill defines "business entity" to mean a "domestic entity" or "foreign entity" as those terms are defined by a certain provision in the Business Organizations Code.

C.S.S.B. 747 repeals Section 1101.356(c), Occupations Code, relating to education requirements

for a real estate broker license.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 747 differs from the original to include in the redefinition of "broker," as an addition to the list of activities performed by a broker, the controlling of the acceptance or deposit of rent from a resident of a single-family residential real property unit, whereas the original includes the collection or acceptance of rent from residents of a multifamily dwelling with fewer than five units. The substitute differs from the original by adding to that list of activities the providing of a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion meets certain specified criteria, including that the analysis, opinion, or conclusion is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property, whereas the original adds the providing of a written opinion relating to the estimated price of real property if the opinion meets certain specified criteria, including that the opinion is related to the management, sale, exchange, purchase, or lease of real estate.

C.S.S.B. 747, in provisions making the renewal of an educational program accreditation contingent on the program meeting or exceeding certain benchmarks, contains a provision not included in the original specifying that the contingency applies to the renewal of the accreditation of a program for the program's specific license category.

C.S.S.B. 747 contains a provision not included in the original prohibiting a business entity from acting as a broker unless the business entity holds a license issued under The Real Estate License Act. The substitute omits a provision included in the original prohibiting a person employed by, sponsored by, or associated with a business entity from acting as or representing that the person is a real estate broker or salesperson or acting as a residential rental locator unless the business entity holds a license issued under the act.

C.S.S.B. 747 contains a specification not included in the original, in provisions requiring an applicant and a license holder to provide the TREC with the applicant's or license holder's e-mail address, that such information must be provided only if the e-mail address is available.

C.S.S.B. 747 differs from the original in the amount of active experience in Texas or another state as a licensed broker or salesperson an applicant for a broker license must provide to the TREC as satisfactory evidence of experience, or alternate experience in another state, by requiring such an applicant to have at least four years of active experience during the 60 months preceding the date the application is filed, whereas the original requires six years of active experience during the 84 months preceding that date.

C.S.S.B. 747 differs from the original by making changes to the active experience requirements for active experience for an application for a real estate broker license applicable only to an application for a broker license submitted to the TREC on or after January 1, 2012, and by making changes to the education requirements for the first renewal of a real estate salesperson license applicable only to an application for a salesperson license submitted to the TREC on or after September 1, 2012, whereas the original makes those provisions applicable only to applications for such licenses submitted to the TREC after the bill's effective date.

C.S.S.B. 747 contains a provision not included in the original repealing Section 1101.356(c), Occupations Code, relating to education requirements for a real estate broker license.

C.S.S.B. 747 contains provisions not included in the original making conforming changes and

nonsubstantive changes reflective of certain bill drafting conventions.