

BILL ANALYSIS

Senate Research Center

S.B. 1353
By: Eltife et al.
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1995, the legislature created an exemption for professional services (e.g., doctors, lawyers, real estate licensees, and pharmacists) in the Deceptive Trade Practices Act (DTPA). Professional services under DTPA are defined as providing judgments, opinions, advice, or other similar professional skills. Additionally, professionals protected by the exemption were intended to be registered, certified, or licensed persons who either paid into a recovery fund or who were covered by errors and omissions.

Despite the enactment of the DTPA professional services exemption, the exemption has been inconsistently and infrequently applied to real estate licenses. This causes real estate licensees to defend against frivolous claims that the legislature intended to prevent.

S.B. 1353 amends the Texas Business and Commerce Code to specifically exempt real estate licensees from DTPA. Alternative legal avenues such as Chapter 27 (Fraud) of the Texas Business and Commerce Code and the recovery fund administered by the Texas Real Estate Commission continue to exist for consumers to pursue claims against real estate licensees who commit fraud.

S.B. 1353 amends current law relating to certain claims against persons licensed as real estate brokers and salespersons.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17.49, Business & Commerce Code, by adding Subsection (i), as follows:

(i) Provides that nothing in this subchapter shall apply to a claim against a person licensed as a broker or salesperson under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code, arising from an act or omission by the person while acting as a broker or salesperson. Provides that this exemption does not apply to an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion; a failure to disclose information in violation of Section 17.46(b)(24) (relating to failing to disclose certain information); or an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion.

SECTION 2. Makes application of Section 17.49(i), Business & Commerce Code, as added by this Act, prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.