

By: Kuempel, et al.

H.B. No. 1146

Substitute the following for H.B. No. 1146:

By: Geren

C.S.H.B. No. 1146

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the registration and regulation of appraisal management
3 companies and the composition of the Texas Appraiser Licensing and
4 Certification Board; providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 1103.052(a), Occupations Code, is
7 amended to read as follows:

8 (a) The board consists of nine members as follows:

9 (1) the executive secretary of the Veterans' Land
10 Board or the executive secretary's designee; and

11 (2) eight members appointed by the governor with the
12 advice and consent of the senate as follows:

13 (A) four members who are certified or licensed
14 appraisers actively engaged in the practice of appraising real
15 property; ~~and~~

16 (B) three ~~four~~ public members who qualify for
17 appointment based on their recognized business ability; and

18 (C) one member who is a controlling person of an
19 appraisal management company registered under Chapter 1104.

20 SECTION 2. Section 1103.055(a), Occupations Code, is
21 amended to read as follows:

22 (a) Appointed members of the board serve staggered two-year
23 terms, with the terms of two appraiser members and one or two public
24 members, as appropriate, expiring on January 31 of each year.

1 SECTION 3. Subtitle A, Title 7, Occupations Code, is
2 amended by adding Chapter 1104 to read as follows:

3 CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 1104.001. SHORT TITLE. This chapter may be cited as
6 the Texas Appraisal Management Company Registration and Regulation
7 Act.

8 Sec. 1104.002. PURPOSE. The purpose of this chapter is to
9 establish and enforce standards related to appraisal management
10 services for appraisal reports on residential properties located in
11 this state with fewer than five units.

12 Sec. 1104.003. DEFINITIONS. (a) The definitions in Section
13 1103.003 apply to this chapter.

14 (b) In this chapter:

15 (1) "Appraisal management company" means, in
16 connection with valuing properties collateralizing mortgage loans
17 or mortgages incorporated in a securitization, an external third
18 party authorized either by a creditor of a consumer credit
19 transaction secured by a consumer's principal dwelling or by an
20 underwriter of or other principal in the secondary mortgage markets
21 that directly or indirectly performs appraisal management
22 services.

23 (2) "Appraisal management service" means to directly
24 or indirectly:

25 (A) administer an appraisal panel;

26 (B) recruit, retain, or select an appraiser;

27 (C) contract with an appraiser to perform an

1 appraisal assignment;

2 (D) provide a completed appraisal performed by an
3 appraiser to one or more clients; or

4 (E) manage the process of having an appraisal
5 performed, including:

6 (i) receiving and assigning appraisal
7 orders and reports;

8 (ii) tracking and determining the status of
9 orders for appraisals;

10 (iii) conducting quality control of a
11 completed appraisal before delivery of the appraisal to the person
12 who ordered the appraisal;

13 (iv) collecting fees from creditors and
14 underwriters for services provided; or

15 (v) reimbursing appraisers for services
16 performed.

17 (3) "Appraisal panel" means a pool of licensed or
18 certified appraisers who perform appraisals as independent
19 contractors for an appraisal management company.

20 (4) "Appraisal review" means the act or process of
21 developing and communicating an opinion about the quality of
22 another appraiser's work that was performed as part of an appraisal
23 assignment. The term does not include an examination of an
24 appraisal for grammatical, typographical, mathematical, or other
25 similar administrative errors that do not involve the appraiser's
26 professional judgment, including compliance with the elements of
27 the client's statement of work.

1 (5) "Appraiser" means a person licensed or certified
2 under Chapter 1103.

3 (6) "Controlling person" means:

4 (A) an owner, officer, or director of an
5 appraisal management company;

6 (B) an individual employed, appointed, or
7 authorized by an appraisal management company that has the
8 authority to enter into a contractual relationship with other
9 persons for the performance of appraisal management services and
10 the authority to enter into agreements with appraisers for the
11 performance of appraisals; or

12 (C) an individual who possesses, directly or
13 indirectly, the power to direct or cause the direction of the
14 management or policies of an appraisal management company.

15 (7) "Financial institution" means:

16 (A) a bank, savings bank, or savings and loan
17 association or a wholly owned subsidiary or affiliate of a bank,
18 savings bank, or savings and loan association;

19 (B) a state or federal credit union or a wholly
20 owned subsidiary, affiliate, or credit union service organization
21 of a state or federal credit union;

22 (C) an insurance company licensed or authorized
23 to do business in this state under the Insurance Code;

24 (D) a mortgage banker registered under Chapter
25 157, Finance Code;

26 (E) a person licensed under Chapter 156, Finance
27 Code;

1 (F) a lender licensed under Chapter 342, Finance
2 Code;

3 (G) a farm credit system institution; or

4 (H) a political subdivision of this state
5 conducting an affordable home ownership program.

6 (8) "Uniform Standards of Professional Appraisal
7 Practice" means the Uniform Standards of Professional Appraisal
8 Practice adopted by the Appraisal Standards Board of the Appraisal
9 Foundation.

10 Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply
11 to:

12 (1) a person who exclusively employs appraisers on an
13 employer and employee basis for the performance of appraisals;

14 (2) a person acting as an appraisal firm as defined by
15 board rule that at all times during a calendar year employs on an
16 exclusive basis as independent contractors not more than 15
17 appraisers for the performance of appraisals;

18 (3) a department or unit within a financial
19 institution that:

20 (A) is subject to appraisal independence
21 standards at least as stringent as those under Section 1104.203 or
22 the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through
23 direct regulation by an agency of this state or the United States
24 government; and

25 (B) receives a request for the performance of an
26 appraisal from one employee of the financial institution and
27 another employee of the same financial institution assigns the

1 appraisal request to an appraiser who is an independent contractor
2 to the institution;

3 (4) subject to Subsection (b), a person who enters
4 into an agreement with an appraiser for the performance of an
5 appraisal that on completion results in a report signed by both the
6 appraiser who completed the appraisal and the appraiser who
7 requested completion of the appraisal;

8 (5) an appraisal management company with an appraisal
9 panel of not more than 15 appraisers at all times during a calendar
10 year; or

11 (6) an appraisal management company that is a
12 subsidiary owned and controlled by a financial institution that is
13 subject to appraisal independence standards at least as stringent
14 as those under Section 1104.203 or the Truth in Lending Act (15
15 U.S.C. Section 1601 et seq.) through direct regulation by a federal
16 financial institution regulatory agency.

17 (b) An appraisal management company may not require an
18 employee of the appraisal management company who is an appraiser to
19 sign an appraisal that is completed by another appraiser who
20 contracts with the appraisal management company in order to avoid
21 the requirements of this chapter.

22 [Sections 1104.005-1104.050 reserved for expansion]

23 SUBCHAPTER B. BOARD POWERS AND DUTIES

24 Sec. 1104.051. RULES. The board may adopt rules necessary
25 to administer this chapter.

26 Sec. 1104.052. FEES. (a) Subject to Subsection (b), the
27 board by rule shall establish application, renewal, and other fees

1 in amounts so that the sum of the fees paid by all appraisal
2 management companies seeking registration under this chapter are
3 sufficient for the administration of this chapter.

4 (b) The board shall collect annually from each appraisal
5 management company registered under this chapter the amount
6 determined by the appraisal subcommittee to be a national registry
7 fee for each person who is on the appraisal panel of the company and
8 licensed or certified as an appraiser in this state. The board shall
9 deposit the registry fees to the credit of the appraiser registry
10 account in the general revenue fund.

11 (c) The fees collected under Subsection (b) shall be sent to
12 the appraisal subcommittee regularly as required by federal law.

13 [Sections 1104.053-1104.100 reserved for expansion]

14 SUBCHAPTER C. REGISTRATION REQUIREMENTS

15 Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is
16 registered under this chapter, a person may not:

17 (1) act or attempt to act as an appraisal management
18 company;

19 (2) provide or attempt to provide appraisal management
20 services; or

21 (3) advertise or represent or attempt to advertise or
22 represent the person as an appraisal management company.

23 Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP.

24 (a) An appraisal management company applying for registration
25 under this chapter may not be directly or indirectly owned, wholly
26 or partly, by:

27 (1) a person who has had a license or certificate to

1 act as an appraiser denied, revoked, or surrendered in lieu of
2 revocation in any state; or

3 (2) another entity more than 10 percent of which is
4 owned by any person who has had a license or certificate to act as an
5 appraiser denied, revoked, or surrendered in lieu of revocation in
6 any state.

7 (b) A person owning more than 10 percent of an appraisal
8 management company in this state must:

9 (1) be of good moral character, as determined by the
10 board; and

11 (2) submit to a background investigation, as
12 determined by the board.

13 (c) An appraisal management company applying for
14 registration under this chapter shall certify to the board that:

15 (1) it has reviewed each entity that owns more than 10
16 percent of the company; and

17 (2) no entity reviewed under Subdivision (1) is more
18 than 10 percent owned by a person who has had a license or
19 certificate to act as an appraiser denied, revoked, or surrendered
20 in lieu of revocation.

21 Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL.

22 (a) An applicant for registration or registration renewal under
23 this chapter must submit:

24 (1) an application on a form prescribed and provided
25 by the board; and

26 (2) the application or renewal fee established under
27 Section 1104.052(a).

1 (b) The application must contain:

2 (1) the name, business address, and telephone contact
3 information of the entity seeking registration;

4 (2) if the entity is not a corporation domiciled in
5 this state, the name and contact information for the company's
6 agent for service of process in this state;

7 (3) the name, address, and contact information for any
8 individual or any corporation, partnership, or other business
9 entity that owns more than 10 percent of the appraisal management
10 company;

11 (4) the name, address, and contact information for at
12 least one controlling person;

13 (5) the designation of a primary contact under Section
14 1104.104;

15 (6) the name and contact information of at least one
16 appraiser designated by the company to respond to and communicate
17 with appraisers on the company's appraisal panel regarding
18 appraisal assignments;

19 (7) a certification that the entity has a system in
20 place to ensure compliance with Subchapter D;

21 (8) a written irrevocable consent to service of
22 process; and

23 (9) any other information required by the board.

24 (c) The board shall adopt rules regarding the renewal of a
25 registration under this chapter.

26 Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An
27 appraisal management company applying for registration under this

1 chapter shall designate one controlling person as the primary
2 contact for all communication between the board and the company.

3 (b) The controlling person designated under Subsection (a):

4 (1) must be certified as an appraiser in at least one
5 state at all times during the designation;

6 (2) must have completed the 15-hour national Uniform
7 Standards of Professional Appraisal Practice course;

8 (3) must complete the seven-hour national Uniform
9 Standards of Professional Appraisal Practice course every two
10 years;

11 (4) may not have had a license or certificate to act as
12 an appraiser denied, revoked, or surrendered in lieu of revocation
13 in any state;

14 (5) must be of good moral character, as determined by
15 the board; and

16 (6) shall submit to a background investigation, as
17 determined by the board.

18 Sec. 1104.105. DENIAL OF REGISTRATION. (a) The board may
19 deny a registration:

20 (1) to an applicant who fails to satisfy a requirement
21 of this chapter; or

22 (2) on a determination by the board that:

23 (A) there is probable cause to believe that any
24 person who owns more than 10 percent of the appraisal management
25 company or any controlling person of the company has, within the 12
26 months preceding the date of the application, violated a provision
27 of this chapter to which a registrant would be subject;

1 (B) the applicant has, while registered under
2 this chapter, demonstrated incompetency, untrustworthiness, or
3 conduct or practices that render the registrant unfit to perform
4 appraisal management services; or

5 (C) the applicant no longer performs appraisal
6 management services in good faith and is a source of detriment,
7 injury, or loss to the public.

8 (b) The board shall immediately provide written notice to
9 the applicant of the board's denial of a registration under this
10 chapter.

11 (c) An appeal of the denial of a registration is governed by
12 Chapter 2001, Government Code.

13 Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION
14 NUMBER. The board shall:

15 (1) issue a unique registration number to each
16 appraisal management company registered under this chapter; and

17 (2) publish annually a list of the companies
18 registered under this chapter and the registration number of each
19 company.

20 Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed,
21 a registration issued under this chapter expires on the second
22 anniversary of the date the registration is issued.

23 [Sections 1104.108-1104.150 reserved for expansion]

24 SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

25 Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.

26 (a) An appraisal management company registered under this chapter
27 may not knowingly:

1 (1) employ a person in a position in which the person
2 has the responsibility to order appraisals or to review completed
3 appraisals if the person has had a license or certificate to act as
4 an appraiser denied, revoked, or surrendered in lieu of revocation
5 in any state;

6 (2) enter into any independent contractor arrangement
7 with any person who has had a license or certificate to act as an
8 appraiser denied, revoked, or surrendered in lieu of revocation in
9 any state; or

10 (3) enter into any contract, agreement, or other
11 business relationship with any entity that employs, has entered
12 into an independent contract arrangement, or has entered into any
13 contract, agreement, or other business relationship with any person
14 who has ever had a license or certificate to act as an appraiser
15 denied, revoked, or surrendered in lieu of revocation in any state.

16 (b) An appraisal management company is not in violation of
17 Subsection (a) if the person whose license or certification was
18 denied, revoked, or surrendered in lieu of revocation has since
19 that denial, revocation, or surrender had a license or certificate
20 granted or reinstated and the person maintains the license or
21 certificate in good standing.

22 Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION.
23 An appraisal management company registered under this chapter must
24 verify that an individual to whom the company is making an
25 assignment for the completion of an appraisal:

26 (1) is licensed or certified under Chapter 1103; and

27 (2) has not had a license or certificate as an

1 appraiser denied, revoked, or surrendered in lieu of revocation
2 since the last time the company made an assignment for an appraisal
3 to the appraiser.

4 Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
5 appraisal review for an appraisal management company must be
6 licensed or certified under Chapter 1103 with at least the same
7 certification for the property type as the appraiser who completed
8 the report being reviewed.

9 Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an
10 assignment to an appraiser, an appraisal management company must
11 verify that the appraiser receiving the assignment satisfies each
12 provision of the competency rule of the Uniform Standards of
13 Professional Appraisal Practice for the appraisal being assigned.

14 Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal
15 management company registered under this chapter shall on a
16 periodic basis perform an appraisal review of the work of
17 appraisers performing appraisal services for the company to ensure
18 that the services comply with:

19 (1) the edition of the Uniform Standards of
20 Professional Appraisal Practice in effect at the time of the
21 appraisal; or

22 (2) other standards prescribed by board rule.

23 Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal
24 management company registered under this chapter or that has
25 applied for registration under this chapter shall retain for at
26 least five years all business records relating to each service
27 request that the company receives and the appraiser who performs

1 the appraisal for the company.

2 (b) The board may audit the records of an appraisal
3 management company registered under this chapter to ensure
4 compliance with this chapter, board rules, and the Uniform
5 Standards of Professional Appraisal Practice.

6 (c) A written record of all substantive communications
7 between an appraisal management company registered under this
8 chapter and an appraiser relating to inclusion on an appraisal
9 panel or to an appraisal assignment must be maintained as provided
10 under Subsection (a).

11 Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An
12 appraisal management company shall:

13 (1) except in cases of breach of contract or
14 substandard performance of services, pay an appraiser for the
15 completion of an appraisal or valuation assignment not later than
16 the 60th day after the date the appraiser provides the completed
17 appraisal or valuation assignment to the company or its assignee;
18 and

19 (2) compensate appraisers at a rate that is reasonable
20 and customary for appraisals being performed in the market area of
21 the property being appraised without the services of an appraisal
22 management company.

23 (b) An appraiser who is aggrieved under this section may
24 file a complaint with the board against the appraisal management
25 company if the matter remains unresolved after the appraiser
26 completes the company's dispute resolution process under Section
27 1104.162.

1 Sec. 1104.158. STATEMENT OF FEES. (a) In reports to the
2 board, to a client, or for inclusion in a settlement statement, an
3 appraisal management company shall separately state the fees:

4 (1) paid to an appraiser for the completion of an
5 appraisal; and

6 (2) charged by the company for appraisal management
7 services.

8 (b) An appraisal management company may not:

9 (1) prohibit an appraiser from recording in the report
10 that is submitted by the appraiser to the company the fee that the
11 appraiser was paid by the company for the performance of the
12 appraisal; or

13 (2) include any fees for appraisal management services
14 performed by the company in the amount the company reports as
15 charges for the actual completion of an appraisal by an appraiser.

16 Sec. 1104.159. ADVERTISING. An appraisal management
17 company registered under this chapter shall disclose the company's
18 registration number on all print and electronic advertising,
19 including any electronic advertising or communication conducted on
20 the Internet.

21 Sec. 1104.160. MANDATORY REPORTING. An appraisal
22 management company that has a reasonable basis to believe an
23 appraiser is failing to comply with the Uniform Standards of
24 Professional Appraisal Practice in a manner that materially affects
25 a value conclusion, violating applicable laws, or otherwise
26 engaging in unethical or unprofessional conduct shall refer the
27 matter to the board.

1 Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL.

2 (a) Other than during the first 30 days after the date an appraiser
3 is first added to the appraisal panel of an appraisal management
4 company, a company may not remove an appraiser from its panel, or
5 otherwise refuse to assign requests for appraisal services to an
6 appraiser without:

7 (1) notifying the appraiser in writing of the reasons
8 for removal from the company's panel;

9 (2) if the appraiser is being removed from the panel
10 for illegal conduct, a violation of the Uniform Standards of
11 Professional Appraisal Practice, or a violation of this chapter,
12 notifying the appraiser of the nature of the alleged conduct or
13 violation; and

14 (3) providing an opportunity for the appraiser to
15 respond in writing to the notification.

16 (b) An appraiser who is removed from the appraisal panel of
17 an appraisal management company for alleged illegal conduct, a
18 violation of the Uniform Standards of Professional Appraisal
19 Practice, or a violation of this chapter, may file a complaint with
20 the board for a review of the decision of the company if the matter
21 remains unresolved after the appraiser completes the company's
22 dispute resolution process under Section 1104.162.

23 (c) In a review under Subsection (b), the board may not make
24 any determination regarding the nature of the business relationship
25 between the appraiser and the appraisal management company that is
26 unrelated to the grounds for the removal.

27 (d) The board shall hear and resolve a complaint filed under

1 Subsection (b) not later than the 180th day after the date the
2 complaint is filed with the board.

3 (e) If after opportunity for hearing and review, the board
4 determines that an appraiser did not commit the alleged violation,
5 the board shall order that the appraiser be returned to the
6 appraisal panel of the appraisal management company. The appraisal
7 management company may not refuse to make assignments for appraisal
8 services or otherwise penalize the appraiser after returning the
9 appraiser to the company's appraisal panel.

10 (f) The board may enter an order requiring the appraiser to
11 reimburse the appraisal management company for the actual cost of a
12 third-party dispute resolution process if after opportunity for
13 hearing and review the board determines that the appraiser
14 committed the alleged violation.

15 Sec. 1104.162. MANDATORY DISPUTE RESOLUTION. (a) An
16 appraisal management company shall make an internal independent or
17 external third-party dispute resolution process available on
18 written request of an appraiser who:

19 (1) is dismissed from the company's appraisal panel
20 for a reason stated in Section 1104.161(b);

21 (2) is aggrieved under Section 1104.157; or

22 (3) alleges a violation of one or more prohibitions
23 contained in Section 1104.203.

24 (b) Except as provided by Section 1104.161(f), an appraisal
25 management company may not charge an appraiser for using the
26 dispute resolution process under this section.

27 (c) The board by rule may establish requirements for an

1 appraisal management company's dispute resolution process.

2 [Sections 1104.163-1104.200 reserved for expansion]

3 SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND

4 ADMINISTRATIVE PENALTIES

5 Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board
6 may reprimand an appraisal management company or conditionally or
7 unconditionally suspend or revoke any registration issued under
8 this chapter if the board determines that the appraisal management
9 company has:

10 (1) violated or attempted to violate this chapter or
11 any rule adopted by the board under this chapter; or

12 (2) procured or attempted to procure a license or
13 registration by fraud, misrepresentation, or deceit.

14 (b) The board may probate the suspension or revocation of a
15 registration under reasonable terms determined by the board.

16 Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to
17 any other disciplinary action under this chapter, the board may
18 impose an administrative penalty against a person who violates this
19 chapter or a rule adopted under this chapter.

20 (b) The amount of the administrative penalty may not exceed
21 \$10,000 for each violation. Each day of a continuing violation is a
22 separate violation.

23 (c) The amount of the penalty shall be based on:

24 (1) the seriousness of the violation;

25 (2) the history of previous violations;

26 (3) the amount necessary to deter a future violation;

27 (4) efforts made to correct the violation; and

1 (5) any other matter that justice may require.

2 Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal
3 management company or an employee, director, officer, or agent of
4 an appraisal management company may not:

5 (1) cause or attempt to cause the appraised value of a
6 property assigned under an appraisal to be based on any factor other
7 than the independent judgment of the appraiser;

8 (2) cause or attempt to cause the mischaracterization
9 of the appraised value of a property in conjunction with a consumer
10 credit transaction;

11 (3) seek to influence an appraiser or otherwise to
12 encourage a targeted value in order to facilitate the making or
13 pricing of a consumer credit transaction;

14 (4) alter, modify, or otherwise change a completed
15 appraisal report submitted by an appraiser by:

16 (A) altering or removing the appraiser's
17 signature or seal; or

18 (B) adding information to, removing information
19 from, or changing information contained in the appraisal report,
20 including any disclosure submitted by an appraiser in or with the
21 report;

22 (5) condition the request for an appraisal or the
23 payment of an appraisal fee, salary, or bonus on the opinion,
24 conclusion, or valuation to be reached, or on a preliminary
25 estimate or opinion requested from an appraiser;

26 (6) request that an appraiser provide an estimated,
27 predetermined, or desired valuation in an appraisal report, or

1 provide estimated values or comparable sales at any time before the
2 appraiser's completion of an appraisal;

3 (7) provide to an appraiser an anticipated, estimated,
4 encouraged, or desired value for a subject property or a proposed or
5 target amount to be loaned to the borrower, except that a copy of
6 the sales contract for a purchase transaction may be provided;

7 (8) make any part of the appraiser's fee or the
8 appraisal management company's fee contingent on a favorable
9 outcome, including:

10 (A) a loan closing; or

11 (B) a specific valuation being achieved by the
12 appraiser in the appraisal report;

13 (9) withhold or threaten to withhold timely payment
14 for an appraisal report or appraisal services rendered when the
15 appraisal report or services are provided in accordance with the
16 contract between the parties;

17 (10) withhold or threaten to withhold future business
18 from an appraiser;

19 (11) demote or terminate or threaten to demote or
20 terminate an appraiser;

21 (12) expressly or impliedly promise future business,
22 promotions, or increased compensation for an appraiser;

23 (13) provide to an appraiser, or any person related to
24 the appraiser, stock or other financial or nonfinancial benefits;

25 (14) allow the removal of an appraiser from an
26 appraisal panel, without prior written notice to the appraiser;

27 (15) obtain, use, or pay for a second or subsequent

1 appraisal or order an automated valuation model in connection with
2 a mortgage financing transaction unless:

3 (A) there is a reasonable basis to believe that
4 the initial appraisal was flawed or tainted and that basis is
5 clearly and appropriately noted in the loan file;

6 (B) the subsequent appraisal or automated
7 valuation model is done under a bona fide pre-funding or
8 post-funding appraisal review or quality control process; or

9 (C) the subsequent appraisal or automated
10 valuation model is otherwise required or permitted by federal or
11 state law;

12 (16) prohibit or inhibit communication between the
13 appraiser and:

14 (A) the lender;

15 (B) a real estate license holder;

16 (C) an appraiser designated by the company to
17 respond to appraisers regarding appraisal assignments; or

18 (D) any other person from whom the appraiser, in
19 the appraiser's own professional judgment, believes information
20 would be relevant;

21 (17) refuse to accept an appraisal report prepared by
22 more than one appraiser if an appraiser provides substantial
23 assistance to another appraiser in the preparation of the report,
24 unless the appraisal assignment names an individual appraiser or
25 the statement of work requires an unassisted report; or

26 (18) require an appraiser to:

27 (A) prepare an appraisal report if the appraiser,

1 in the appraiser's own professional judgment, believes the
2 appraiser does not have the necessary expertise for the specific
3 geographic area;

4 (B) prepare an appraisal report under a schedule
5 that the appraiser, in the appraiser's own professional judgment,
6 believes does not afford the appraiser the ability to meet all the
7 relevant legal and professional obligations;

8 (C) provide the appraisal management company
9 with the appraiser's digital signature or seal;

10 (D) modify any aspect of an appraisal report
11 without the appraiser's agreement that the modification is
12 appropriate;

13 (E) engage in any act or practice that does not
14 comply with:

15 (i) the Uniform Standards of Professional
16 Appraisal Practice; or

17 (ii) any assignment conditions and
18 certifications required by the client;

19 (F) engage in any other act or practice that
20 impairs or attempts to impair an appraiser's independence,
21 objectivity, or impartiality;

22 (G) enter into an agreement to not serve on the
23 panel of another appraisal management company;

24 (H) indemnify or hold harmless the appraisal
25 management company against liability except liability for errors
26 and omissions by the appraiser; or

27 (I) pay a fee imposed on the appraisal management

1 company under Section 1104.052.

2 (b) Subsection (a) may not be construed as prohibiting:

3 (1) an appraiser from reimbursing an appraisal
4 management company for the actual cost of discretionary services
5 provided to the appraiser;

6 (2) an appraiser from voluntarily providing the
7 appraiser's digital signature to another person;

8 (3) an appraisal management company from asking an
9 appraiser, after a report is delivered, to:

10 (A) consider additional appropriate property
11 information, including the consideration of additional comparable
12 properties to make or support an appraisal;

13 (B) provide further detail, substantiation, or
14 explanation for the appraiser's value conclusion; or

15 (C) correct errors in the appraisal report; or

16 (4) an appraisal management company from requiring an
17 appraiser to provide advance notice of and an opportunity for the
18 appraisal management company to participate in any communications
19 between the appraiser and a lender.

20 (c) The board may institute a disciplinary action or impose
21 an administrative penalty under Chapter 1103 against an appraiser
22 who, while acting as an employee, officer, or agent of an appraisal
23 management company, engages in conduct prohibited by Subsection
24 (a).

25 Sec. 1104.204. COMPLAINT. (a) Any person, including a
26 member of the board, may file with the board a written complaint on
27 a form prescribed by the board.

1 (b) The board, on its own motion, may file a complaint
2 against an appraisal management company registered under this
3 chapter.

4 Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt
5 of a complaint or on its own motion, the board shall review and
6 investigate an alleged act or omission that the board believes is a
7 ground for disciplinary action.

8 (b) An investigator designated by the presiding officer of
9 the board shall investigate each allegation in a complaint to
10 determine whether probable cause exists for a hearing on the
11 complaint.

12 (c) If the board determines that a complaint does not
13 present facts that are grounds for disciplinary action, the board
14 or the commissioner shall dismiss the complaint and may not take
15 further action.

16 Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board
17 may request and, if necessary, compel by subpoena:

18 (1) the attendance of witnesses for examination under
19 oath; and

20 (2) the production of records, documents, and other
21 evidence relevant to the investigation of an alleged violation of
22 this chapter for inspection and copying.

23 (b) The board may also issue a subpoena for purposes of an
24 investigation of a complaint to determine whether the board should
25 institute a contested case proceeding.

26 (c) If a person does not comply with a subpoena, the board,
27 acting through the attorney general, may file suit to enforce the

1 subpoena in a district court in Travis County or in the county in
2 which a hearing conducted by the board may be held.

3 (d) The court shall order compliance with the subpoena if
4 the court finds that good cause exists for the issuance of the
5 subpoena.

6 Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At
7 the conclusion of the investigation of a complaint, the
8 investigator shall submit to the board a written report to enable
9 the board to determine what further action is necessary.

10 (b) The report must contain:

11 (1) statements of fact;

12 (2) the recommendations of the investigator; and

13 (3) the position or defense of the investigated
14 appraisal management company.

15 Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the
16 report submitted under Section 1104.207, the board may:

17 (1) order further investigation of the complaint;

18 (2) determine that there is not probable cause to
19 believe that a violation occurred and dismiss the case; or

20 (3) determine that there is probable cause to believe
21 that a violation occurred and enter into an agreed order with the
22 respondent or proceed as the complainant with a contested case
23 hearing under Chapter 2001, Government Code.

24 (b) The board by rule may delegate any of its authority
25 under Subsection (a) to the commissioner.

26 Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If,
27 after investigating a possible violation and the facts surrounding

1 that possible violation, the board determines that a violation
2 occurred, the board shall give written notice of the violation to
3 the person alleged to have committed the violation.

4 (b) The notice must:

5 (1) include a summary of the alleged violation;

6 (2) state the recommended sanction, including the
7 amount of the proposed administrative penalty; and

8 (3) inform the person of the person's right to a
9 hearing on the occurrence of the violation, the amount of the
10 penalty, or both.

11 (c) Not later than the 20th day after the date the person
12 receives the notice, the person may:

13 (1) accept the board's determination, including the
14 proposed administrative penalty; or

15 (2) make a written request for a hearing on that
16 determination.

17 Sec. 1104.210. PENALTY TO BE PAID OR HEARING REQUESTED. If
18 the person accepts the board's determination or fails to respond to
19 the notice in a timely manner, the board by order shall approve the
20 determination and impose the proposed penalty.

21 Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding
22 officer of the board shall appoint a three-member disciplinary
23 panel consisting of board members to determine whether a person's
24 registration under this chapter should be temporarily suspended.

25 (b) If the disciplinary panel determines from the
26 information presented to the panel that a person registered under
27 this chapter would, by the person's continuation in practice,

1 constitute a continuing threat to the public welfare, the
2 disciplinary panel shall temporarily suspend the person's
3 registration.

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

6 (1) institution of proceedings for a contested case
7 hearing is initiated simultaneously with the temporary suspension;
8 and

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

11 (d) A temporary suspension under this section automatically
12 expires after 45 days if the board has not scheduled a hearing to
13 take place within that time or if, at the board's request, the
14 hearing is continued beyond the 45th day.

15 (e) Notwithstanding Chapter 551, Government Code, the
16 disciplinary panel may hold a meeting by telephone conference call
17 if immediate action is required and convening the panel at one
18 location is inconvenient for any member of the panel.

19 Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th
20 day before the hearing date of a contested case involving an
21 appraisal management company, the board shall personally deliver or
22 send by certified mail to the company notice of the hearing.

23 Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
24 LAW. Except as otherwise provided by this chapter, a proceeding
25 under this subchapter is subject to Chapter 2001, Government Code.

26 Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a
27 contested case hearing under this subchapter, the administrative

1 law judge shall:

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

3 (2) issue to the board a proposal for decision that the

4 board shall take one or more of the following actions:

5 (A) dismiss the charges;

6 (B) revoke the appraisal management company's

7 registration;

8 (C) suspend the registration of the appraisal

9 management company for a period of not more than five years;

10 (D) impose a period of probation, with or without

11 conditions;

12 (E) issue a public or private reprimand or a

13 warning;

14 (F) impose an administrative penalty; or

15 (G) require the payment of costs expended by the

16 board associated with the contested case, including legal fees and

17 administrative costs.

18 Sec. 1104.215. DECISION BY BOARD. (a) Based on the

19 findings of fact and conclusions of law and the recommendations of

20 the hearings examiner, the board by order may determine that:

21 (1) a violation has occurred and may impose an

22 administrative penalty or another sanction; or

23 (2) a violation did not occur.

24 (b) The board shall give notice of the order to the person.

25 The notice must include:

26 (1) separate statements of the findings of fact and

27 conclusions of law;

1 (2) the amount of any penalty imposed or a description
2 of any sanction imposed; and

3 (3) a statement of the right of the person to judicial
4 review of the order.

5 Sec. 1104.216. APPLICATION FOR REHEARING. (a) Not later
6 than the 20th day after the date a final decision is issued in a
7 contested case, a party may file an application with the board for a
8 rehearing. The application must state:

9 (1) the specific grounds for rehearing; and

10 (2) the relief sought.

11 (b) The application is denied if the board does not grant it
12 before the 20th day after the date the commissioner is served with
13 the application.

14 Sec. 1104.217. DECISION ON REHEARING. (a) The decision
15 made at the conclusion of the original contested case hearing may
16 not be reversed or modified for a procedural, evidentiary, or other
17 error that did not cause substantial injustice to the parties.

18 (b) The decision made on a rehearing may incorporate by
19 reference any part of the decision made at the conclusion of the
20 original hearing.

21 (c) On rehearing, the administrative law judge shall
22 consider facts not presented in the original hearing if:

23 (1) the facts arose after the original hearing was
24 concluded;

25 (2) the party offering the evidence could not
26 reasonably have provided the evidence at the original hearing; or

27 (3) the party offering the evidence was misled by a

1 party regarding the necessity for offering the evidence at the
2 original hearing.

3 [Sections 1104.218-1104.250 reserved for expansion]

4 SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS

5 Sec. 1104.251. INJUNCTION. (a) The board may institute an
6 action in its own name against any person, including a person who is
7 not registered under this chapter, to enjoin a violation of this
8 chapter or a rule adopted by the board under this chapter.

9 (b) An action under this section must be brought in a
10 district court in Travis County. The attorney general shall act as
11 legal advisor to the board and provide necessary legal assistance.

12 Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY
13 WITHOUT REQUIRED REGISTRATION. (a) A person who receives
14 consideration for engaging in an activity for which registration is
15 required under this chapter and who is not registered is liable for
16 a civil penalty.

17 (b) The amount of a civil penalty imposed under this section
18 may not be less than the amount of money equal to the value of the
19 consideration received or more than three times the amount of money
20 equal to the value of the consideration received.

21 (c) At the request of the board, the attorney general or a
22 district or county attorney may bring an action in district court to
23 recover a civil penalty under this section.

24 (d) A civil penalty recovered in an action under this
25 section shall be deposited in the state treasury.

26 Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY
27 WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if

1 the person engages in an activity for which registration is
2 required under this chapter without being registered.

3 (b) An offense under this section is a Class A misdemeanor.

4 SECTION 4. Not later than January 1, 2012, the Texas
5 Appraiser Licensing and Certification Board shall adopt all rules,
6 fees, and forms as required by Chapter 1104, Occupations Code, as
7 added by this Act.

8 SECTION 5. (a) Except as provided by Subsections (b) and
9 (c) of this section, this Act takes effect September 1, 2011.

10 (b) Sections 1103.052(a) and 1103.055(a), Occupations Code,
11 as amended by this Act, take effect January 31, 2012.

12 (c) Section 1104.101 and Subchapters E and F, Chapter 1104,
13 Occupations Code, as added by this Act, take effect March 1, 2012.