

1-1 By: Kuempel, et al. (Senate Sponsor - Carona) H.B. No. 1146
1-2 (In the Senate - Received from the House April 28, 2011;
1-3 April 28, 2011, read first time and referred to Committee on
1-4 Business and Commerce; May 12, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 2; May 12, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1146 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the registration and regulation of appraisal management
1-11 companies; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter D, Chapter 1103, Occupations Code, is
1-14 amended by adding Section 1103.157 to read as follows:

1-15 Sec. 1103.157. ADVISORY COMMITTEE. (a) The board shall
1-16 establish an advisory committee to advise the board and make
1-17 recommendations on matters related to the regulation of appraisal
1-18 management companies under Chapter 1104.

1-19 (b) The advisory committee consists of the assistant
1-20 presiding officer of the board and two persons appointed by the
1-21 governor as follows:

1-22 (1) a controlling person of an appraisal management
1-23 company registered under Chapter 1104; and

1-24 (2) a public member with recognized business ability.

1-25 (c) The assistant presiding officer of the board shall serve
1-26 as the presiding officer of the advisory committee.

1-27 (d) The members of the advisory committee appointed by the
1-28 governor serve staggered two-year terms, with the terms of the
1-29 appraisal management company member and the public member expiring
1-30 on January 31 of alternating years.

1-31 SECTION 2. Subtitle A, Title 7, Occupations Code, is
1-32 amended by adding Chapter 1104 to read as follows:

1-33 CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

1-34 SUBCHAPTER A. GENERAL PROVISIONS

1-35 Sec. 1104.001. SHORT TITLE. This chapter may be cited as
1-36 the Texas Appraisal Management Company Registration and Regulation
1-37 Act.

1-38 Sec. 1104.002. PURPOSE. The purpose of this chapter is to
1-39 establish and enforce standards related to appraisal management
1-40 services for appraisal reports on residential properties located in
1-41 this state with fewer than five units.

1-42 Sec. 1104.003. DEFINITIONS. (a) The definitions in
1-43 Section 1103.003 apply to this chapter.

1-44 (b) In this chapter:

1-45 (1) "Appraisal management company" means, in
1-46 connection with valuing properties collateralizing mortgage loans
1-47 or mortgages incorporated in a securitization, an external third
1-48 party authorized either by a creditor of a consumer credit
1-49 transaction secured by a consumer's principal dwelling or by an
1-50 underwriter of or other principal in the secondary mortgage markets
1-51 that directly or indirectly performs appraisal management
1-52 services.

1-53 (2) "Appraisal management service" means to directly
1-54 or indirectly perform any of the following acts:

1-55 (A) administer an appraisal panel;

1-56 (B) recruit, retain, or select an appraiser;

1-57 (C) contract with an appraiser to perform an
1-58 appraisal assignment;

1-59 (D) provide a completed appraisal performed by an
1-60 appraiser to one or more clients; or

1-61 (E) manage the process of having an appraisal
1-62 performed, including:

1-63 (i) receiving and assigning appraisal

2-1 orders and reports;
 2-2 (ii) tracking and determining the status of
 2-3 orders for appraisals;
 2-4 (iii) conducting quality control of a
 2-5 completed appraisal before delivery of the appraisal to the person
 2-6 who ordered the appraisal;
 2-7 (iv) collecting fees from creditors and
 2-8 underwriters for services provided; or
 2-9 (v) reimbursing appraisers for services
 2-10 performed.
 2-11 (3) "Appraisal panel" means a pool of licensed or
 2-12 certified appraisers who perform appraisals as independent
 2-13 contractors for an appraisal management company.
 2-14 (4) "Appraisal review" means the act or process of
 2-15 developing and communicating an opinion about the quality of
 2-16 another appraiser's work that was performed as part of an appraisal
 2-17 assignment. The term does not include an examination of an
 2-18 appraisal for grammatical, typographical, mathematical, or other
 2-19 similar administrative errors that do not involve the appraiser's
 2-20 professional judgment, including compliance with the elements of
 2-21 the client's statement of work.
 2-22 (5) "Appraiser" means a person licensed or certified
 2-23 under Chapter 1103.
 2-24 (6) "Controlling person" means:
 2-25 (A) an owner, officer, or director of an
 2-26 appraisal management company;
 2-27 (B) an individual employed, appointed, or
 2-28 authorized by an appraisal management company that has the
 2-29 authority to enter into a contractual relationship with other
 2-30 persons for the performance of appraisal management services and
 2-31 the authority to enter into agreements with appraisers for the
 2-32 performance of appraisals; or
 2-33 (C) an individual who possesses, directly or
 2-34 indirectly, the power to direct or cause the direction of the
 2-35 management or policies of an appraisal management company.
 2-36 (7) "Financial institution" means:
 2-37 (A) a bank, savings bank, or savings and loan
 2-38 association or a subsidiary or affiliate of a bank, savings bank, or
 2-39 savings and loan association;
 2-40 (B) a state or federal credit union or a
 2-41 subsidiary, affiliate, or credit union service organization of a
 2-42 state or federal credit union;
 2-43 (C) an insurance company licensed or authorized
 2-44 to do business in this state under the Insurance Code;
 2-45 (D) a mortgage banker registered under Chapter
 2-46 157, Finance Code;
 2-47 (E) a person licensed under Chapter 156, Finance
 2-48 Code;
 2-49 (F) a lender licensed under Chapter 342, Finance
 2-50 Code;
 2-51 (G) a farm credit system institution; or
 2-52 (H) a political subdivision of this state
 2-53 conducting an affordable home ownership program.
 2-54 (8) "Uniform Standards of Professional Appraisal
 2-55 Practice" means the Uniform Standards of Professional Appraisal
 2-56 Practice adopted by the Appraisal Standards Board of the Appraisal
 2-57 Foundation.
 2-58 Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply
 2-59 to:
 2-60 (1) a person who exclusively employs appraisers on an
 2-61 employer and employee basis for the performance of appraisals;
 2-62 (2) a person acting as an appraisal firm as defined by
 2-63 board rule that at all times during a calendar year employs on an
 2-64 exclusive basis as independent contractors not more than 15
 2-65 appraisers for the performance of appraisals;
 2-66 (3) a financial institution, including a department or
 2-67 unit within the institution, that is regulated by an agency of this
 2-68 state or the United States government;
 2-69 (4) subject to Subsection (b), a person who enters

3-1 into an agreement with an appraiser for the performance of an
3-2 appraisal that on completion results in a report signed by both the
3-3 appraiser who completed the appraisal and the appraiser who
3-4 requested completion of the appraisal;

3-5 (5) an appraisal management company with an appraisal
3-6 panel of not more than 15 appraisers at all times during a calendar
3-7 year; or

3-8 (6) an appraisal management company that is a
3-9 subsidiary owned and controlled by a financial institution that is
3-10 subject to appraisal independence standards at least as stringent
3-11 as those under Section 1104.203 or the Truth in Lending Act (15
3-12 U.S.C. Section 1601 et seq.) through regulation by an agency of this
3-13 state or the United States government.

3-14 (b) An appraisal management company may not require an
3-15 employee of the appraisal management company who is an appraiser to
3-16 sign an appraisal that is completed by another appraiser who
3-17 contracts with the appraisal management company in order to avoid
3-18 the requirements of this chapter.

3-19 [Sections 1104.005-1104.050 reserved for expansion]

3-20 SUBCHAPTER B. BOARD POWERS AND DUTIES

3-21 Sec. 1104.051. RULES. The board may adopt rules necessary
3-22 to administer the provisions of this chapter.

3-23 Sec. 1104.052. FEES. (a) Subject to Subsection (b), the
3-24 board by rule shall establish application, renewal, and other fees
3-25 in amounts so that the sum of the fees paid by all appraisal
3-26 management companies seeking registration under this chapter is
3-27 sufficient for the administration of this chapter.

3-28 (b) The board shall collect from each appraisal management
3-29 company registered under this chapter the national registry fee
3-30 required by the appraisal subcommittee for each person who is on the
3-31 appraisal panel of the company and licensed or certified as an
3-32 appraiser in this state. The board shall deposit the registry fees
3-33 to the credit of the appraiser registry account in the general
3-34 revenue fund.

3-35 (c) The fees collected under Subsection (b) shall be sent to
3-36 the appraisal subcommittee regularly as required by federal law.

3-37 [Sections 1104.053-1104.100 reserved for expansion]

3-38 SUBCHAPTER C. REGISTRATION REQUIREMENTS

3-39 Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is
3-40 registered under this chapter, a person may not:

3-41 (1) act or attempt to act as an appraisal management
3-42 company;

3-43 (2) provide or attempt to provide appraisal management
3-44 services; or

3-45 (3) advertise or represent or attempt to advertise or
3-46 represent the person as an appraisal management company.

3-47 Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP.

3-48 (a) A person who has had a license or certificate to act as an
3-49 appraiser denied, revoked, or surrendered in lieu of revocation in
3-50 any state may not own in any manner more than one percent of an
3-51 appraisal management company registered or applying for
3-52 registration under this chapter unless the person has subsequently
3-53 had a license or certificate to act as an appraiser granted or
3-54 reinstated.

3-55 (b) An entity more than 10 percent of which is owned by a
3-56 person who has had a license or certificate to act as an appraiser
3-57 denied, revoked, or surrendered in lieu of revocation in any state
3-58 may not own more than 10 percent of an appraisal management company
3-59 registered or applying for registration under this chapter unless
3-60 the person has subsequently had a license or certificate to act as
3-61 an appraiser granted or reinstated.

3-62 (c) A person owning more than 10 percent of an appraisal
3-63 management company in this state must:

3-64 (1) be of good moral character, as determined by the
3-65 board; and

3-66 (2) submit to a background investigation, as
3-67 determined by the board.

3-68 (d) An appraisal management company applying for
3-69 registration under this chapter shall certify to the board that:

4-1 (1) it has reviewed each entity that owns more than 10
4-2 percent of the company; and

4-3 (2) no entity reviewed under Subdivision (1) is more
4-4 than 10 percent owned by a person who has had a license or
4-5 certificate to act as an appraiser denied, revoked, or surrendered
4-6 in lieu of revocation and who has not subsequently had a license or
4-7 certificate to act as an appraiser granted or reinstated.

4-8 Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL.

4-9 (a) An applicant for registration or registration renewal under
4-10 this chapter must submit:

4-11 (1) an application on a form approved by the board; and

4-12 (2) the application or renewal fee established under
4-13 Section 1104.052(a).

4-14 (b) The application must contain:

4-15 (1) the name, business address, and telephone contact
4-16 information of the entity seeking registration;

4-17 (2) if the entity is not a corporation domiciled in
4-18 this state, the name and contact information for the company's
4-19 agent for service of process in this state;

4-20 (3) the name, address, and contact information for any
4-21 individual or any corporation, partnership, or other business
4-22 entity that owns more than 10 percent of the appraisal management
4-23 company;

4-24 (4) the name, address, and contact information for at
4-25 least one controlling person;

4-26 (5) the designation of a primary contact under Section
4-27 1104.104;

4-28 (6) the name and contact information of at least one
4-29 appraiser designated by the company to respond to and communicate
4-30 with appraisers on the company's appraisal panel regarding
4-31 appraisal assignments;

4-32 (7) a certification that the entity has a system in
4-33 place to ensure compliance with Subchapter D and Section 129E of the
4-34 Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

4-35 (8) a written irrevocable consent to service of
4-36 process; and

4-37 (9) any other information required by the board to
4-38 approve the application.

4-39 (c) The board shall adopt rules regarding the renewal of a
4-40 registration under this chapter.

4-41 Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An
4-42 appraisal management company applying for registration under this
4-43 chapter shall designate one controlling person as the primary
4-44 contact for all communication between the board and the company.

4-45 (b) The controlling person designated under Subsection (a):

4-46 (1) must:

4-47 (A) be certified as an appraiser in at least one
4-48 state at all times during the designation; or

4-49 (B) have completed:

4-50 (i) the 15-hour national Uniform Standards
4-51 of Professional Appraisal Practice course; and

4-52 (ii) the seven-hour national Uniform
4-53 Standards of Professional Appraisal Practice update course not more
4-54 than two years before the renewal of the appraisal management
4-55 company's registration;

4-56 (2) may not have had a license or certificate to act as
4-57 an appraiser denied, revoked, or surrendered in lieu of revocation
4-58 in any state unless the person has subsequently had a license or
4-59 certificate to act as an appraiser granted or reinstated;

4-60 (3) must be of good moral character, as determined by
4-61 the board; and

4-62 (4) shall submit to a background investigation, as
4-63 determined by the board.

4-64 Sec. 1104.105. DENIAL OF REGISTRATION. (a) The board may
4-65 deny a registration:

4-66 (1) to an applicant who fails to satisfy a requirement
4-67 of this chapter; or

4-68 (2) on a determination by the board that:

4-69 (A) there is reasonable evidence that any person

5-1 who owns more than 10 percent of the appraisal management company or
 5-2 any controlling person of the company has, within the 24 months
 5-3 preceding the date of the application, had a license or
 5-4 certification as an appraiser or a registration as an appraisal
 5-5 management company suspended, revoked, or put on probation in any
 5-6 state;

5-7 (B) the applicant has, while registered under
 5-8 this chapter, demonstrated incompetency, untrustworthiness, or
 5-9 conduct or practices that render the registrant unfit to perform
 5-10 appraisal management services; or

5-11 (C) the applicant no longer performs appraisal
 5-12 management services in good faith and is a source of detriment,
 5-13 injury, or loss to the public.

5-14 (b) The board shall immediately provide written notice to
 5-15 the applicant of the board's denial of a registration under this
 5-16 chapter.

5-17 (c) An appeal of the denial of a registration is governed by
 5-18 Chapter 2001, Government Code.

5-19 Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION
 5-20 NUMBER. The board shall:

5-21 (1) issue a unique registration number to each
 5-22 appraisal management company registered under this chapter; and

5-23 (2) publish annually a list of the companies
 5-24 registered under this chapter and the registration number of each
 5-25 company.

5-26 Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed,
 5-27 a registration issued under this chapter expires on the second
 5-28 anniversary of the date the registration is issued.

5-29 [Sections 1104.108-1104.150 reserved for expansion]

5-30 SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

5-31 Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.

5-32 (a) An appraisal management company registered under this chapter
 5-33 may not knowingly:

5-34 (1) employ a person in a position in which the person
 5-35 has the responsibility to order appraisals or to review completed
 5-36 appraisals if the person has had a license or certificate to act as
 5-37 an appraiser denied, revoked, or surrendered in lieu of revocation
 5-38 in any state;

5-39 (2) enter into any independent contractor arrangement
 5-40 for the provision of appraisals or appraisal management services
 5-41 with any person who has had a license or certificate to act as an
 5-42 appraiser denied, revoked, or surrendered in lieu of revocation in
 5-43 any state; or

5-44 (3) enter into any contract, agreement, or other
 5-45 business relationship for the provision of appraisals or appraisal
 5-46 management services with any entity that employs, has entered into
 5-47 an independent contract arrangement, or has entered into any
 5-48 contract, agreement, or other business relationship with any person
 5-49 who has ever had a license or certificate to act as an appraiser
 5-50 denied, revoked, or surrendered in lieu of revocation in any state.

5-51 (b) An appraisal management company is not in violation of
 5-52 Subsection (a) if the person whose license or certification was
 5-53 denied, revoked, or surrendered in lieu of revocation has since
 5-54 that denial, revocation, or surrender had a license or certificate
 5-55 granted or reinstated and the person maintains the license or
 5-56 certificate in good standing.

5-57 Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION.
 5-58 An appraisal management company registered under this chapter must
 5-59 verify that an individual to whom the company is making an
 5-60 assignment for the completion of an appraisal:

5-61 (1) is licensed or certified under Chapter 1103; and

5-62 (2) has not had a license or certificate as an
 5-63 appraiser denied, revoked, or surrendered in lieu of revocation
 5-64 since the last time the company made an assignment for an appraisal
 5-65 to the appraiser.

5-66 Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
 5-67 appraisal review for an appraisal management company must be
 5-68 licensed or certified under Chapter 1103 with at least the same
 5-69 certification for the property type as the appraiser who completed

6-1 the report being reviewed.

6-2 Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an
6-3 assignment to an appraiser, an appraisal management company must
6-4 verify that the appraiser receiving the assignment satisfies each
6-5 provision of the competency rule of the Uniform Standards of
6-6 Professional Appraisal Practice for the appraisal being assigned.

6-7 Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal
6-8 management company registered under this chapter shall on a
6-9 periodic basis perform an appraisal review of the work of
6-10 appraisers performing appraisal services for the company to ensure
6-11 that the services comply with:

6-12 (1) the edition of the Uniform Standards of
6-13 Professional Appraisal Practice in effect at the time of the
6-14 appraisal; or

6-15 (2) other standards prescribed by board rule.

6-16 Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal
6-17 management company registered under this chapter or that has
6-18 applied for registration under this chapter shall retain for at
6-19 least five years all business records relating to each service
6-20 request that the company receives and the appraiser who performs
6-21 the appraisal for the company.

6-22 (b) The board may audit the records of an appraisal
6-23 management company registered under this chapter to ensure
6-24 compliance with this chapter, board rules, and the Uniform
6-25 Standards of Professional Appraisal Practice.

6-26 (c) A written record of all substantive communications
6-27 between an appraisal management company registered under this
6-28 chapter and an appraiser relating to inclusion on an appraisal
6-29 panel or to an appraisal assignment must be maintained as provided
6-30 under Subsection (a).

6-31 Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An
6-32 appraisal management company shall:

6-33 (1) except in cases of breach of contract or
6-34 substandard performance of services, pay an appraiser for the
6-35 completion of an appraisal or valuation assignment not later than
6-36 the 60th day after the date the appraiser provides the completed
6-37 appraisal or valuation assignment to the company or its assignee;
6-38 and

6-39 (2) compensate appraisers at a rate that is reasonable
6-40 and customary for appraisals being performed in the market area of
6-41 the property being appraised consistent with the presumptions under
6-42 federal law.

6-43 (b) An appraiser who is aggrieved under this section may
6-44 file a complaint with the board against the appraisal management
6-45 company if the matter remains unresolved after the appraiser
6-46 completes the company's dispute resolution process under Section
6-47 1104.162.

6-48 Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a
6-49 client, an appraisal management company shall separately state the
6-50 fees:

6-51 (1) paid to an appraiser for the completion of an
6-52 appraisal; and

6-53 (2) charged by the company for appraisal management
6-54 services.

6-55 (b) An appraisal management company may not:

6-56 (1) prohibit an appraiser from recording in the body
6-57 of the report that is submitted by the appraiser to the company the
6-58 fee that the appraiser was paid by the company for completing the
6-59 appraisal; or

6-60 (2) include any fees for appraisal management services
6-61 performed by the company in the amount the company reports as
6-62 charges for the actual completion of an appraisal by an appraiser.

6-63 Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An
6-64 appraisal management company registered under this chapter shall
6-65 disclose the company's registration number on all documents used to
6-66 procure appraisals in this state.

6-67 Sec. 1104.160. MANDATORY REPORTING. An appraisal
6-68 management company that has a reasonable basis to believe an
6-69 appraiser is failing to comply with the Uniform Standards of

7-1 Professional Appraisal Practice in a manner that materially affects
7-2 a value conclusion, violating applicable laws, or otherwise
7-3 engaging in unethical or unprofessional conduct shall refer the
7-4 matter to the board in the manner provided by Section 1104.204.

7-5 Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL.

7-6 (a) Other than during the first 30 days after the date an appraiser
7-7 is first added to the appraisal panel of an appraisal management
7-8 company, a company may not remove an appraiser from its panel, or
7-9 otherwise refuse to assign requests for appraisal services to an
7-10 appraiser without:

7-11 (1) notifying the appraiser in writing of the reasons
7-12 for removal from the company's panel;

7-13 (2) if the appraiser is being removed from the panel
7-14 for illegal conduct, a violation of the Uniform Standards of
7-15 Professional Appraisal Practice, or a violation of this chapter,
7-16 notifying the appraiser of the nature of the alleged conduct or
7-17 violation; and

7-18 (3) providing an opportunity for the appraiser to
7-19 respond in writing to the notification.

7-20 (b) An appraiser who is removed from the appraisal panel of
7-21 an appraisal management company for alleged illegal conduct, a
7-22 violation of the Uniform Standards of Professional Appraisal
7-23 Practice, or a violation of this chapter, may file a complaint with
7-24 the board for a review of the decision of the company if the matter
7-25 remains unresolved after the appraiser completes the company's
7-26 dispute resolution process under Section 1104.162.

7-27 (c) In a review under Subsection (b), the board may not make
7-28 any determination regarding the nature of the business relationship
7-29 between the appraiser and the appraisal management company that is
7-30 unrelated to the grounds for the removal.

7-31 (d) The board shall hear and resolve a complaint filed under
7-32 Subsection (b) not later than the 180th day after the date the
7-33 complaint is filed with the board.

7-34 (e) If after opportunity for hearing and review, the board
7-35 determines that an appraiser did not commit the alleged violation,
7-36 the board shall order that the appraiser be returned to the
7-37 appraisal panel of the appraisal management company. The appraisal
7-38 management company may not refuse to make assignments for appraisal
7-39 services or otherwise penalize the appraiser after returning the
7-40 appraiser to the company's appraisal panel.

7-41 Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management
7-42 company shall make a dispute resolution process available to review
7-43 a written request by an appraiser who:

7-44 (1) is dismissed from the company's appraisal panel
7-45 for a reason stated in Section 1104.161(a)(2);

7-46 (2) is not paid as required by Section 1104.157; or

7-47 (3) alleges a violation by the company of one or more
7-48 prohibitions in Section 1104.203.

7-49 [Sections 1104.163-1104.200 reserved for expansion]

7-50 SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND
7-51 ADMINISTRATIVE PENALTIES

7-52 Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board
7-53 may reprimand an appraisal management company or conditionally or
7-54 unconditionally suspend or revoke any registration issued under
7-55 this chapter if the board determines that the appraisal management
7-56 company has:

7-57 (1) violated or attempted to violate this chapter or
7-58 any rule adopted by the board under this chapter; or

7-59 (2) procured or attempted to procure a license or
7-60 registration by fraud, misrepresentation, or deceit.

7-61 (b) The board may probate the suspension or revocation of a
7-62 registration under reasonable terms determined by the board.

7-63 Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to
7-64 any other disciplinary action under this chapter, the board may
7-65 impose an administrative penalty against a person who violates this
7-66 chapter or a rule adopted under this chapter.

7-67 (b) The amount of the administrative penalty may not exceed
7-68 \$10,000 for each violation. Each day of a continuing violation is a
7-69 separate violation.

8-1 (c) The amount of the penalty shall be based on:

8-2 (1) the seriousness of the violation;

8-3 (2) the history of previous violations;

8-4 (3) the amount necessary to deter a future violation;

8-5 (4) efforts made to correct the violation; and

8-6 (5) any other matter that justice may require.

8-7 Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal
 8-8 management company or an employee, director, officer, or agent of
 8-9 an appraisal management company may not:

8-10 (1) cause or attempt to cause the appraised value of a
 8-11 property assigned under an appraisal to be based on any factor other
 8-12 than the independent judgment of the appraiser;

8-13 (2) cause or attempt to cause the mischaracterization
 8-14 of the appraised value of a property in conjunction with a consumer
 8-15 credit transaction;

8-16 (3) seek to influence an appraiser or otherwise to
 8-17 encourage a targeted value in order to facilitate the making or
 8-18 pricing of a consumer credit transaction;

8-19 (4) alter, modify, or otherwise change a completed
 8-20 appraisal report submitted by an appraiser by:

8-21 (A) altering or removing the appraiser's
 8-22 signature or seal; or

8-23 (B) adding information to, removing information
 8-24 from, or changing information contained in the appraisal report,
 8-25 including any disclosure submitted by an appraiser in or with the
 8-26 report;

8-27 (5) condition the request for an appraisal or the
 8-28 payment of an appraisal fee, salary, or bonus on the opinion,
 8-29 conclusion, or valuation to be reached, or on a preliminary
 8-30 estimate or opinion requested from an appraiser;

8-31 (6) request that an appraiser provide an estimated,
 8-32 predetermined, or desired valuation in an appraisal report, or
 8-33 provide estimated values or comparable sales at any time before the
 8-34 appraiser's completion of an appraisal;

8-35 (7) provide to an appraiser an anticipated, estimated,
 8-36 encouraged, or desired value for a subject property or a proposed or
 8-37 target amount to be loaned to the borrower, except that a copy of
 8-38 the sales contract for a purchase transaction may be provided;

8-39 (8) make any part of the appraiser's fee or the
 8-40 appraisal management company's fee contingent on a favorable
 8-41 outcome, including:

8-42 (A) a loan closing; or

8-43 (B) a specific valuation being achieved by the
 8-44 appraiser in the appraisal report;

8-45 (9) withhold or threaten to withhold timely payment
 8-46 for an appraisal report or appraisal services rendered when the
 8-47 appraisal report or services are provided in accordance with the
 8-48 contract between the parties;

8-49 (10) withhold or threaten to withhold future business
 8-50 from an appraiser;

8-51 (11) demote or terminate or threaten to demote or
 8-52 terminate an appraiser;

8-53 (12) expressly or impliedly promise future business,
 8-54 promotions, or increased compensation for an appraiser;

8-55 (13) provide to an appraiser, or any person related to
 8-56 the appraiser, stock or other financial or nonfinancial benefits;

8-57 (14) allow the removal of an appraiser from an
 8-58 appraisal panel, without prior written notice to the appraiser;

8-59 (15) obtain, use, or pay for a second or subsequent
 8-60 appraisal or order an automated valuation model in connection with
 8-61 a mortgage financing transaction unless:

8-62 (A) there is a reasonable basis to believe that
 8-63 the initial appraisal was flawed or tainted and that basis is
 8-64 clearly and appropriately noted in the loan file;

8-65 (B) the subsequent appraisal or automated
 8-66 valuation model is done under a bona fide pre-funding or
 8-67 post-funding appraisal review or quality control process; or

8-68 (C) the subsequent appraisal or automated
 8-69 valuation model is otherwise required or permitted by federal or

9-1 state law;
9-2 (16) prohibit legal and allowable communication
9-3 between the appraiser and:
9-4 (A) the lender;
9-5 (B) a real estate license holder; or
9-6 (C) any other person from whom the appraiser, in
9-7 the appraiser's own professional judgment, believes information
9-8 would be relevant;
9-9 (17) refuse to accept an appraisal report prepared by
9-10 more than one appraiser if an appraiser provides substantial
9-11 assistance to another appraiser in the preparation of the report,
9-12 unless the appraisal assignment names an individual appraiser or
9-13 the statement of work requires an unassisted report; or
9-14 (18) require an appraiser to:
9-15 (A) prepare an appraisal report if the appraiser,
9-16 in the appraiser's own professional judgment, believes the
9-17 appraiser does not have the necessary expertise for the specific
9-18 geographic area and the appraiser has notified the company of this
9-19 belief;
9-20 (B) prepare an appraisal report under a schedule
9-21 that the appraiser, in the appraiser's own professional judgment,
9-22 believes does not afford the appraiser the ability to meet all the
9-23 relevant legal and professional obligations if the appraiser has
9-24 notified the company of this belief;
9-25 (C) provide the appraisal management company
9-26 with the appraiser's digital signature or seal;
9-27 (D) modify any aspect of an appraisal report
9-28 without the appraiser's agreement that the modification is
9-29 appropriate;
9-30 (E) engage in any act or practice that does not
9-31 comply with:
9-32 (i) the Uniform Standards of Professional
9-33 Appraisal Practice; or
9-34 (ii) any assignment conditions and
9-35 certifications required by the client;
9-36 (F) engage in any other act or practice that
9-37 impairs or attempts to impair an appraiser's independence,
9-38 objectivity, or impartiality;
9-39 (G) enter into an agreement to not serve on the
9-40 panel of another appraisal management company;
9-41 (H) indemnify or hold harmless the appraisal
9-42 management company against liability except liability for errors
9-43 and omissions by the appraiser; or
9-44 (I) pay a fee imposed on the appraisal management
9-45 company under Section 1104.052.
9-46 (b) Subsection (a) may not be construed to prohibit:
9-47 (1) an appraiser from reimbursing an appraisal
9-48 management company for the actual cost of discretionary services
9-49 provided to the appraiser;
9-50 (2) an appraiser from voluntarily providing the
9-51 appraiser's digital signature to another person;
9-52 (3) an appraisal management company from asking an
9-53 appraiser, after a report is delivered, to:
9-54 (A) consider additional appropriate property
9-55 information, including the consideration of additional comparable
9-56 properties to make or support an appraisal;
9-57 (B) provide further detail, substantiation, or
9-58 explanation for the appraiser's value conclusion; or
9-59 (C) correct errors in the appraisal report;
9-60 (4) an appraisal management company from requiring an
9-61 appraiser to provide advance notice of and an opportunity for the
9-62 appraisal management company to participate in any legal and
9-63 allowable communications between the appraiser and a lender; or
9-64 (5) a copy of an executed contract for a purchase
9-65 transaction being provided to an appraiser.
9-66 (c) The board may institute a disciplinary action or impose
9-67 an administrative penalty under Chapter 1103 against an appraiser
9-68 who, while acting as an employee, officer, or agent of an appraisal
9-69 management company, engages in conduct prohibited by Subsection

10-1 (a).

10-2 Sec. 1104.204. COMPLAINT. (a) Any person, including a
 10-3 member of the board, may file with the board a written complaint on
 10-4 a form prescribed by the board.

10-5 (b) The board, on its own motion, may file a complaint
 10-6 against an appraisal management company registered under this
 10-7 chapter.

10-8 Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of
 10-9 a complaint or on its own motion, the board shall review and
 10-10 investigate an alleged act or omission that the board believes is a
 10-11 ground for disciplinary action.

10-12 (b) An investigator designated by the presiding officer of
 10-13 the board or commissioner shall investigate each allegation in a
 10-14 complaint to determine whether probable cause exists for a hearing
 10-15 on the complaint.

10-16 (c) If the board determines that a complaint does not
 10-17 present facts that are grounds for disciplinary action, the board
 10-18 or the commissioner shall dismiss the complaint and may not take
 10-19 further action.

10-20 Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board
 10-21 may request and, if necessary, compel by subpoena:

10-22 (1) the attendance of witnesses for examination under
 10-23 oath; and

10-24 (2) the production of records, documents, and other
 10-25 evidence relevant to the investigation of an alleged violation of
 10-26 this chapter for inspection and copying.

10-27 (b) The board may also issue a subpoena for purposes of an
 10-28 investigation of a complaint to determine whether the board should
 10-29 institute a contested case proceeding.

10-30 (c) If a person does not comply with a subpoena, the board,
 10-31 acting through the attorney general, may file suit to enforce the
 10-32 subpoena in a district court in Travis County or in the county in
 10-33 which a hearing conducted by the board may be held.

10-34 (d) The court shall order compliance with the subpoena if
 10-35 the court finds that good cause exists for the issuance of the
 10-36 subpoena.

10-37 Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At
 10-38 the conclusion of the investigation of a complaint, the
 10-39 investigator shall submit to the board a written report to enable
 10-40 the board to determine what further action is necessary.

10-41 (b) The report must contain:

10-42 (1) statements of fact;

10-43 (2) the recommendations of the investigator; and

10-44 (3) the position or defense of the investigated
 10-45 appraisal management company.

10-46 Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the
 10-47 report submitted under Section 1104.207, the board may:

10-48 (1) order further investigation of the complaint;

10-49 (2) determine that there is not probable cause to
 10-50 believe that a violation occurred and dismiss the case; or

10-51 (3) determine that there is probable cause to believe
 10-52 that a violation occurred and enter into an agreed order with the
 10-53 respondent or proceed as the complainant with a contested case
 10-54 hearing under Chapter 2001, Government Code.

10-55 (b) The board by rule may delegate any of its authority
 10-56 under Subsection (a) to the commissioner.

10-57 Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If,
 10-58 after investigating a possible violation and the facts surrounding
 10-59 that possible violation, the board determines that a violation
 10-60 occurred, the board shall give written notice of the violation to
 10-61 the person alleged to have committed the violation.

10-62 (b) The notice must:

10-63 (1) include a summary of the alleged violation;

10-64 (2) state the recommended sanction, including the
 10-65 amount of the proposed administrative penalty; and

10-66 (3) inform the person of the person's right to a
 10-67 hearing on the occurrence of the violation, the amount of the
 10-68 penalty, or both.

10-69 (c) Not later than the 20th day after the date the person

11-1 receives the notice, the person may:

11-2 (1) accept the board's determination, including the
 11-3 proposed administrative penalty; or

11-4 (2) make a written request for a hearing on that
 11-5 determination.

11-6 Sec. 1104.210. PENALTY TO BE PAID OR HEARING REQUESTED. If
 11-7 the person accepts the board's determination or fails to respond to
 11-8 the notice in a timely manner, the board by order shall approve the
 11-9 determination and impose the proposed penalty.

11-10 Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding
 11-11 officer of the board shall appoint a three-member disciplinary
 11-12 panel consisting of board members to determine whether a person's
 11-13 registration under this chapter should be temporarily suspended.

11-14 (b) If the disciplinary panel determines from the
 11-15 information presented to the panel that a person registered under
 11-16 this chapter would, by the person's continuation in practice,
 11-17 constitute a continuing threat to the public welfare, the
 11-18 disciplinary panel shall temporarily suspend the person's
 11-19 registration.

11-20 (c) A registration may be suspended under this section
 11-21 without notice or hearing on the complaint if:

11-22 (1) institution of proceedings for a contested case
 11-23 hearing is initiated simultaneously with the temporary suspension;
 11-24 and

11-25 (2) a hearing is held under Chapter 2001, Government
 11-26 Code, and this chapter as soon as possible.

11-27 (d) A temporary suspension under this section automatically
 11-28 expires after 45 days if the board has not scheduled a hearing to
 11-29 take place within that time or if, at the board's request, the
 11-30 hearing is continued beyond the 45th day.

11-31 (e) Notwithstanding Chapter 551, Government Code, the
 11-32 disciplinary panel may hold a meeting by telephone conference call
 11-33 if immediate action is required and convening the panel at one
 11-34 location is inconvenient for any member of the panel.

11-35 Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th
 11-36 day before the hearing date of a contested case involving an
 11-37 appraisal management company, the board shall personally deliver or
 11-38 send by certified mail to the company notice of the hearing.

11-39 Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE
 11-40 LAW. Except as otherwise provided by this chapter, a proceeding
 11-41 under this subchapter is subject to Chapter 2001, Government Code.

11-42 Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a
 11-43 contested case hearing under this subchapter, the administrative
 11-44 law judge shall:

11-45 (1) make findings of fact and conclusions of law; and

11-46 (2) issue to the board a proposal for decision that the
 11-47 board shall take one or more of the following actions:

11-48 (A) dismiss the charges;

11-49 (B) revoke the appraisal management company's
 11-50 registration;

11-51 (C) suspend the registration of the appraisal
 11-52 management company for a period of not more than five years;

11-53 (D) impose a period of probation, with or without
 11-54 conditions;

11-55 (E) issue a public or private reprimand or a
 11-56 warning;

11-57 (F) impose an administrative penalty; or

11-58 (G) require the payment of costs expended by the
 11-59 board associated with the contested case, including legal fees and
 11-60 administrative costs.

11-61 Sec. 1104.215. DECISION BY BOARD. (a) Based on the
 11-62 findings of fact and conclusions of law and the recommendations of
 11-63 the hearings examiner, the board by order may determine that:

11-64 (1) a violation has occurred and may impose an
 11-65 administrative penalty or another sanction; or

11-66 (2) a violation did not occur.

11-67 (b) The board shall give notice of the order to the person.

11-68 The notice must include:

11-69 (1) separate statements of the findings of fact and

12-1 conclusions of law;
 12-2 (2) the amount of any penalty imposed or a description
 12-3 of any sanction imposed; and
 12-4 (3) a statement of the right of the person to judicial
 12-5 review of the order.

12-6 Sec. 1104.216. APPLICATION FOR REHEARING. (a) Not later
 12-7 than the 20th day after the date a final decision is issued in a
 12-8 contested case, a party may file an application with the board for a
 12-9 rehearing. The application must state:

12-10 (1) the specific grounds for rehearing; and

12-11 (2) the relief sought.

12-12 (b) The application is denied if the board does not grant it
 12-13 before the 120th day after the date the commissioner is served with
 12-14 the application.

12-15 Sec. 1104.217. DECISION ON REHEARING. (a) The decision
 12-16 made at the conclusion of the original contested case hearing may
 12-17 not be reversed or modified for a procedural, evidentiary, or other
 12-18 error that did not cause substantial injustice to the parties.

12-19 (b) The decision made on a rehearing may incorporate by
 12-20 reference any part of the decision made at the conclusion of the
 12-21 original hearing.

12-22 (c) On rehearing, the administrative law judge shall
 12-23 consider facts not presented in the original hearing if:

12-24 (1) the facts arose after the original hearing was
 12-25 concluded;

12-26 (2) the party offering the evidence could not
 12-27 reasonably have provided the evidence at the original hearing; or

12-28 (3) the party offering the evidence was misled by a
 12-29 party regarding the necessity for offering the evidence at the
 12-30 original hearing.

12-31 [Sections 1104.218-1104.250 reserved for expansion]

12-32 SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS

12-33 Sec. 1104.251. INJUNCTION. (a) The board may institute an
 12-34 action in its own name against any person, including a person who is
 12-35 not registered under this chapter, to enjoin a violation of this
 12-36 chapter or a rule adopted by the board under this chapter.

12-37 (b) An action under this section must be brought in a
 12-38 district court in Travis County. The attorney general shall act as
 12-39 legal advisor to the board and provide necessary legal assistance.

12-40 Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY
 12-41 WITHOUT REQUIRED REGISTRATION. (a) A person who receives
 12-42 consideration for engaging in an activity for which registration is
 12-43 required under this chapter and who is not registered is liable for
 12-44 a civil penalty.

12-45 (b) The amount of a civil penalty imposed under this section
 12-46 may not be less than the amount of money equal to the value of the
 12-47 consideration received or more than three times the amount of money
 12-48 equal to the value of the consideration received.

12-49 (c) At the request of the board, the attorney general or a
 12-50 district or county attorney may bring an action in district court to
 12-51 recover a civil penalty under this section.

12-52 (d) A civil penalty recovered in an action under this
 12-53 section shall be deposited in the state treasury.

12-54 Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY
 12-55 WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if
 12-56 the person engages in an activity for which registration is
 12-57 required under this chapter without being registered.

12-58 (b) An offense under this section is a Class A misdemeanor.

12-59 SECTION 3. Not later than January 31, 2013, the governor
 12-60 shall appoint the members of the advisory committee established
 12-61 under Section 1103.157, Occupations Code, as added by this Act.

12-62 SECTION 4. Not later than January 1, 2012, the Texas
 12-63 Appraiser Licensing and Certification Board shall adopt all rules,
 12-64 fees, and forms as required by Chapter 1104, Occupations Code, as
 12-65 added by this Act.

12-66 SECTION 5. (a) The Real Estate Center at Texas A&M
 12-67 University shall conduct a study of the reasonable and customary
 12-68 rates of compensation for appraisals performed by appraisers in
 12-69 various market areas of this state.

13-1 (b) Not later than November 1, 2012, the Real Estate Center
13-2 at Texas A&M University shall submit to the appropriate standing
13-3 committees of the legislature a report containing the findings of
13-4 the study conducted under Subsection (a) of this section.

13-5 SECTION 6. Notwithstanding Section 7(b) of this Act, an
13-6 appraisal management company conducting business in this state on
13-7 or before the effective date of this Act may continue to conduct
13-8 business in this state without registering under Chapter 1104,
13-9 Occupations Code, as added by this Act, until the 120th day after
13-10 the date the registration process created by the Texas Appraiser
13-11 Licensing and Certification Board under Chapter 1104, Occupations
13-12 Code, as added by this Act, takes effect if that process is not in
13-13 effect on March 1, 2012.

13-14 SECTION 7. (a) Except as provided by Subsection (b) of
13-15 this section, this Act takes effect September 1, 2011.

13-16 (b) Section 1104.101 and Subchapters E and F, Chapter 1104,
13-17 Occupations Code, as added by this Act, take effect March 1, 2012.

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