

1-1 By: Hamilton (Senate Sponsor - Carona) H.B. No. 2375  
1-2 (In the Senate - Received from the House April 18, 2011;  
1-3 April 26, 2011, read first time and referred to Committee on  
1-4 Business and Commerce; May 3, 2011, reported favorably by the  
1-5 following vote: Yeas 8, Nays 0; May 3, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to practices and professions regulated by the Texas  
1-9 Appraiser Licensing and Certification Board.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 1103.002, Occupations Code, is amended  
1-12 to read as follows:

1-13 Sec. 1103.002. PURPOSE. The purpose of this chapter is to:

1-14 (1) conform state law relating to the regulation of  
1-15 real estate appraisers to the requirements adopted under Title XI,  
1-16 Financial Institutions Reform, Recovery, and Enforcement Act of  
1-17 1989; and

1-18 (2) enforce standards for the appraisal of real  
1-19 property.

1-20 SECTION 2. Section 1103.003(1), Occupations Code, is  
1-21 amended to read as follows:

1-22 (1) "Appraisal" means, regardless of whether prepared  
1-23 for a federally related transaction:

1-24 (A) an opinion [estimate] of value; or

1-25 (B) the act or process of developing an opinion  
1-26 of [estimating] value.

1-27 SECTION 3. Section 1103.004(b), Occupations Code, is  
1-28 amended to read as follows:

1-29 (b) This chapter does not prohibit:

1-30 (1) a person authorized by law from performing an  
1-31 evaluation of real property for or providing an evaluation of real  
1-32 property to another person; or

1-33 ~~(2) [a real estate broker or salesperson licensed~~  
1-34 ~~under Chapter 1101 but not certified or licensed under this chapter~~  
1-35 ~~from performing an appraisal in a transaction other than a~~  
1-36 ~~federally related transaction;~~

1-37 ~~[(3) the requirement that a person who is not~~  
1-38 ~~certified or licensed under this chapter be licensed as a real~~  
1-39 ~~estate broker or salesperson to perform an appraisal in a~~  
1-40 ~~transaction other than a federally related transaction; or~~

1-41 ~~[(4)] a real estate broker [or salesperson] licensed~~  
1-42 ~~under Chapter 1101 or a salesperson acting under the authority of a~~  
1-43 ~~sponsoring broker from providing to another person a written~~  
1-44 ~~analysis, [giving an] opinion, or conclusion relating to the~~  
1-45 ~~estimated price of real property if the analysis, [if the] opinion,~~  
1-46 ~~or conclusion:~~

1-47 (A) is not referred to as an appraisal; ~~and~~

1-48 (B) is given in the ordinary course of the  
1-49 broker's or salesperson's business; and

1-50 (C) is related to the actual or potential  
1-51 acquisition, disposition, encumbrance, or management of an  
1-52 interest in [to]:

1-53 ~~[(i) a potential seller or third party~~  
1-54 ~~regarding the recommended listing price of real property; or~~

1-55 ~~[(ii) a potential purchaser or third party~~  
1-56 ~~regarding the recommended purchase price of] real property.~~

1-57 SECTION 4. Section 1103.101(b), Occupations Code, is  
1-58 amended to read as follows:

1-59 (b) The board may delegate to the commissioner the  
1-60 responsibility for administering this chapter, including the  
1-61 approval of consent orders and agreements.

1-62 SECTION 5. Section 1103.151, Occupations Code, is amended  
1-63 to read as follows:

1-64 Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES.

2-1 The board may adopt:

2-2 (1) rules for certifying or licensing an appraiser or  
2-3 approving an appraiser trainee in this state that are in accordance  
2-4 with this chapter and consistent with applicable federal law;

2-5 (2) rules relating to the education and experience  
2-6 required for certifying or licensing an appraiser or approving an  
2-7 appraiser trainee that are consistent with the guidelines  
2-8 recognized by the Appraiser Qualifications Board;

2-9 (3) rules relating to the examination required by  
2-10 Subchapter F; and

2-11 (4) rules relating to procedures for the timely  
2-12 renewal of a certificate, ~~[or]~~ license, or trainee approval.

2-13 SECTION 6. Section 1103.156(a), Occupations Code, is  
2-14 amended to read as follows:

2-15 (a) The board may establish reasonable fees to administer  
2-16 this chapter, including:

2-17 (1) an application fee for a certificate or license;

2-18 (2) an examination fee;

2-19 (3) a renewal fee for a certificate or license;

2-20 (4) a registration fee for a nonresident real estate  
2-21 appraiser;

2-22 (5) an application fee for an appraiser trainee;

2-23 (6) a ~~[an annual]~~ renewal fee for an appraiser  
2-24 trainee;

2-25 (7) a fee for filing a request for a return to active  
2-26 status; and

2-27 (8) other appropriate fees.

2-28 SECTION 7. Subchapter D, Chapter 1103, Occupations Code, is  
2-29 amended by adding Sections 1103.157 and 1103.158 to read as  
2-30 follows:

2-31 Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. The board may  
2-32 solicit, accept, and administer gifts, grants, and donations of any  
2-33 kind from any public or private source for the purposes of this  
2-34 chapter.

2-35 Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER.  
2-36 Notwithstanding Section 572.051, Government Code, a board member  
2-37 may testify as an expert witness in an action concerning a violation  
2-38 of the Uniform Standards of Professional Appraisal Practice.

2-39 SECTION 8. Section 1103.201, Occupations Code, is amended  
2-40 to read as follows:

2-41 Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A  
2-42 [Unless the person is certified under this chapter, a] person may  
2-43 not perform an appraisal of real estate unless the person is  
2-44 licensed or certified as an appraiser under this chapter,  
2-45 registered as a temporary out-of-state appraiser under this  
2-46 chapter, or acting as an appraiser trainee under the sponsorship of  
2-47 a certified appraiser. [+

2-48 (1) use the title "state-certified real estate  
2-49 appraiser", or

2-50 (2) refer to an appraisal prepared by the person as a  
2-51 "certified appraisal."]

2-52 (b) Unless the person holds the appropriate license or  
2-53 certification [is licensed under this chapter], a person may not:

2-54 (1) use the title "state-certified real estate  
2-55 appraiser" or "state-licensed real estate appraiser"; or

2-56 (2) refer to an appraisal performed [prepared] by the  
2-57 person as a "certified appraisal" or "licensed appraisal."

2-58 SECTION 9. Subchapter E, Chapter 1103, Occupations Code, is  
2-59 amended by adding Section 1103.2015 to read as follows:

2-60 Sec. 1103.2015. GENERAL APPLICATION REQUIREMENTS. An  
2-61 applicant for a license or certificate issued under this chapter  
2-62 shall provide the board with the applicant's current mailing  
2-63 address, telephone number, and e-mail address, if available.

2-64 SECTION 10. Section 1103.206(b), Occupations Code, is  
2-65 amended to read as follows:

2-66 (b) The board shall adopt a reliable method to verify the  
2-67 evidence of appraisal experience submitted by an applicant for a  
2-68 certificate or license. The method must include the review of  
2-69 appraisal experience of all applicants for certification and must

3-1 rely on appropriate sampling techniques that are applied to not  
 3-2 more than five percent of the license applications received by the  
 3-3 board. An applicant whose application is selected for verification  
 3-4 has at least 60 days after the date of selection to prepare any  
 3-5 records requested by the board. The board may not require the  
 3-6 applicant to provide more information than the information the  
 3-7 board may obtain under Section 1103.207.

3-8 SECTION 11. Sections 1103.209(a), (e), (f), and (g),  
 3-9 Occupations Code, are amended to read as follows:

3-10 (a) The board shall [~~may~~] issue a reciprocal certificate or  
 3-11 license to an applicant from another state if:

3-12 (1) the appraiser licensing and certification program  
 3-13 of the other state is in compliance with 12 U.S.C. Section 3331 et  
 3-14 seq.;

3-15 (2) the appraiser holds a valid license or certificate  
 3-16 from a state whose requirements for licensure or certification meet  
 3-17 or exceed the licensure or certification requirements of this  
 3-18 state; and

3-19 (3) the appraiser satisfies the board as to the  
 3-20 appraiser's honesty, trustworthiness, and integrity [~~under terms~~  
 3-21 ~~adopted by the board to an applicant who is certified or licensed~~  
 3-22 ~~under the laws of another state having certification or licensing~~  
 3-23 ~~requirements that the board determines have not been disapproved by~~  
 3-24 ~~the Appraiser Qualifications Board. The terms must comply with the~~  
 3-25 ~~minimum criteria for obtaining a certificate or license recognized~~  
 3-26 ~~by the Appraiser Qualifications Board].~~

3-27 (e) An applicant for a certificate or license under this  
 3-28 chapter who is not a resident of this state must submit with the  
 3-29 application an irrevocable consent that states that service of  
 3-30 process in an action against the applicant arising out of the  
 3-31 applicant's activities as a certified or licensed appraiser in this  
 3-32 state may be made by delivery of the process to the commissioner if  
 3-33 the plaintiff in the action, using due diligence, cannot obtain  
 3-34 personal service on the applicant. If process is served as provided  
 3-35 by this subsection, the commissioner shall immediately send a copy  
 3-36 of the material served on the commissioner [~~by regular mail~~] to the  
 3-37 certified or licensed appraiser at the appraiser's address of  
 3-38 record [~~principal place of business and residence address~~].

3-39 (f) The board shall request verification from the state in  
 3-40 which the applicant is certified or licensed to confirm that the  
 3-41 applicant's certificate or license is valid, active, and in good  
 3-42 standing. The board may not issue a reciprocal certificate or  
 3-43 license without that verification.

3-44 (g) A reciprocal certificate or license expires on the  
 3-45 second anniversary of the last day of the month in which it was  
 3-46 [earlier of:

3-47 (1) the expiration date of the certificate or license  
 3-48 held by the applicant in the state in which the applicant is  
 3-49 certified or licensed; or

3-50 (2) the first anniversary of the date the reciprocal  
 3-51 certificate or license is] issued.

3-52 SECTION 12. Subchapter E, Chapter 1103, Occupations Code,  
 3-53 is amended by adding Section 1103.2091 to read as follows:

3-54 Sec. 1103.2091. PROBATIONARY CERTIFICATE, LICENSE, OR  
 3-55 TRAINEE APPROVAL. (a) The board may issue a probationary  
 3-56 certificate or license or approve an appraiser trainee on a  
 3-57 probationary basis.

3-58 (b) The board by rule shall adopt reasonable terms for  
 3-59 issuing a probationary certificate or license and for approval of  
 3-60 an appraiser trainee on a probationary basis.

3-61 (c) A person who holds a probationary certificate or license  
 3-62 or who is approved as an appraiser trainee under this section must  
 3-63 disclose the probationary status to all clients before accepting an  
 3-64 assignment.

3-65 SECTION 13. Subchapter E, Chapter 1103, Occupations Code,  
 3-66 is amended by adding Section 1103.2111 to read as follows:

3-67 Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE, LICENSE, OR  
 3-68 TRAINEE APPROVAL. (a) A person whose certificate, license, or  
 3-69 approval has been expired for 90 days or less may renew the

4-1 certificate, license, or approval by paying to the board a fee equal  
 4-2 to 1-1/2 times the required renewal fee. If a certificate, license,  
 4-3 or approval has been expired for more than 90 days but less than six  
 4-4 months, the person may renew the certificate, license, or approval  
 4-5 by paying to the board a fee equal to two times the required renewal  
 4-6 fee.

4-7 (b) A certificate, license, or approval that is renewed  
 4-8 under this section shall expire on the date that would apply had the  
 4-9 certificate, license, or approval been timely renewed.

4-10 (c) A person may not perform an appraisal in a federally  
 4-11 related transaction while the person is not actively licensed or  
 4-12 certified as an appraiser.

4-13 (d) If a person's certificate, license, or approval has been  
 4-14 expired six months or longer, the person may not renew the  
 4-15 certificate, license, or approval. The person may obtain a new  
 4-16 certificate, license, or approval by complying with the  
 4-17 requirements and procedures for an original application.

4-18 SECTION 14. Section 1103.258(b), Occupations Code, is  
 4-19 amended to read as follows:

4-20 (b) An applicant who fails the examination three  
 4-21 consecutive times may not apply for reexamination or submit a new  
 4-22 license application unless the applicant submits evidence  
 4-23 satisfactory to the board that the applicant has completed  
 4-24 additional education, as prescribed by the board, since the date  
 4-25 the applicant last took the examination [has not successfully  
 4-26 completed the examination before the first anniversary of the date  
 4-27 the application was initially accepted by the board must submit a  
 4-28 new application and pay the required application fee].

4-29 SECTION 15. Subchapter G, Chapter 1103, Occupations Code,  
 4-30 is amended by adding Section 1103.304 to read as follows:

4-31 Sec. 1103.304. EXTENSION OF REGISTRATION. A person may  
 4-32 obtain a 90-day extension of a temporary registration under this  
 4-33 subchapter by completing an extension form approved by the board  
 4-34 and paying any required fee. The board may grant only one extension  
 4-35 for each temporary registration.

4-36 SECTION 16. Subchapter H, Chapter 1103, Occupations Code,  
 4-37 is amended by adding Section 1103.356 to read as follows:

4-38 Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE APPROVAL. A  
 4-39 person may renew an approval as an appraiser trainee by:

4-40 (1) paying the renewal fee established by the board;  
 4-41 (2) providing evidence satisfactory to the board of  
 4-42 completion of any required continuing education; and  
 4-43 (3) meeting any other renewal requirement established  
 4-44 by the board.

4-45 SECTION 17. The heading to Section 1103.403, Occupations  
 4-46 Code, is amended to read as follows:

4-47 Sec. 1103.403. CONTACT INFORMATION [OFFICE LOCATION].

4-48 SECTION 18. Section 1103.403(b), Occupations Code, is  
 4-49 amended to read as follows:

4-50 (b) Not later than the 10th day after the date an [a  
 4-51 certified or licensed] appraiser changes the appraiser's address,  
 4-52 e-mail address, or telephone number [moves from a previously  
 4-53 designated address], the appraiser shall:

4-54 [(1)] notify the board of the change [new office  
 4-55 location on a form prescribed by the board,] and

4-56 [(2)] pay any required [a] fee [set by the board].

4-57 SECTION 19. Subchapter K, Chapter 1103, Occupations Code,  
 4-58 is amended by adding Sections 1103.5011 and 1103.5012 to read as  
 4-59 follows:

4-60 Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) The  
 4-61 commissioner may send an appraiser against whom a complaint has  
 4-62 been filed a notice of violation including:

4-63 (1) a summary of the alleged violation;

4-64 (2) the recommended sanction, including the amount of  
 4-65 any administrative penalty sought; and

4-66 (3) a conspicuous notice that the respondent has the  
 4-67 right to a hearing to contest the alleged violation, the  
 4-68 recommended sanction, or both.

4-69 (b) Not later than the 20th day after the date the person

5-1 receives the notice under Subsection (a), the person may:  
 5-2 (1) accept the commissioner's determination,  
 5-3 including the recommended sanction; or

5-4 (2) request in writing a hearing, to be held under  
 5-5 Chapter 2001, Government Code, on the occurrence of the violation,  
 5-6 the sanction, or both.

5-7 Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. If  
 5-8 the person accepts the commissioner's determination, or fails to  
 5-9 respond in a timely manner to the notice, the board by order shall  
 5-10 approve the determination and order payment of the recommended  
 5-11 penalty, impose the recommended sanction, or both.

5-12 SECTION 20. Section 1103.518, Occupations Code, is amended  
 5-13 to read as follows:

5-14 Sec. 1103.518. ACTION AFTER HEARING. On conclusion of a  
 5-15 contested case hearing and on submission of all written responses  
 5-16 allowed under Section 1103.515, the administrative law judge shall:

5-17 (1) make findings of fact and conclusions of law; and  
 5-18 (2) issue to the board a proposal for decision that the  
 5-19 board take one or more of the following actions:

5-20 (A) dismiss the charges~~[, including issuing an~~  
 5-21 ~~order declaring that the case file is confidential];~~

5-22 (B) suspend or revoke the appraiser's  
 5-23 certificate or license or the appraiser trainee's approval;

5-24 (C) impose a period of probation with or without  
 5-25 conditions;

5-26 (D) require the appraiser to submit to  
 5-27 reexamination for a certificate or license;

5-28 (E) require the appraiser or appraiser trainee to  
 5-29 participate in additional professional education or continuing  
 5-30 education;

5-31 (F) issue a public or private reprimand or a  
 5-32 warning;

5-33 (G) issue a consent order; or

5-34 (H) impose an administrative penalty as  
 5-35 prescribed by Section 1103.552.

5-36 SECTION 21. Section 1103.522, Occupations Code, is amended  
 5-37 to read as follows:

5-38 Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE.  
 5-39 ~~[(a)]~~ A person whose certificate or license has been~~[suspended or]~~  
 5-40 revoked or a person who has surrendered a certificate or license  
 5-41 issued by the board may not apply to the board for reinstatement  
 5-42 until the second anniversary of the date of~~[as provided by the~~  
 5-43 ~~order of suspension or]~~ revocation or surrender.

5-44 ~~[(b) If the order does not establish terms for~~  
 5-45 ~~reinstatement, the appraiser may not.~~

5-46 ~~[(1) make an initial application for reinstatement~~  
 5-47 ~~until the first anniversary of the effective date of the order; or~~

5-48 ~~[(2) make subsequent applications more often than once~~  
 5-49 ~~every two years.]~~

5-50 SECTION 22. Subchapter L, Chapter 1103, Occupations Code,  
 5-51 is amended by adding Section 1103.5511 to read as follows:

5-52 Sec. 1103.5511. TEMPORARY SUSPENSION. (a) The presiding  
 5-53 officer of the board shall appoint a disciplinary panel consisting  
 5-54 of three board members to determine whether a person's license or  
 5-55 certification to practice under this chapter should be temporarily  
 5-56 suspended.

5-57 (b) If the disciplinary panel determines from the  
 5-58 information presented to the panel that a person licensed or  
 5-59 certified to practice under this chapter would, by the person's  
 5-60 continued practice, constitute a continuing threat to the public  
 5-61 welfare, the panel shall temporarily suspend the license or  
 5-62 certification of that person.

5-63 (c) A license or certification may be suspended under this  
 5-64 section without notice or hearing on the complaint if:

5-65 (1) institution of proceedings for a contested case  
 5-66 hearing is initiated simultaneously with the temporary suspension;  
 5-67 and

5-68 (2) a hearing is held under Chapter 2001, Government  
 5-69 Code, and this chapter as soon as possible.

6-1 (d) A temporary suspension under this section automatically  
6-2 expires after 45 days if the board has not scheduled a hearing to  
6-3 take place within that time or if, at the board's request, the  
6-4 hearing is continued beyond the 45th day.

6-5 (e) Notwithstanding Chapter 551, Government Code, the  
6-6 disciplinary panel may hold a meeting by telephone conference call  
6-7 if immediate action is required and convening the panel at one  
6-8 location is inconvenient for any member of the panel.

6-9 SECTION 23. Section 1103.552, Occupations Code, is amended  
6-10 to read as follows:

6-11 Sec. 1103.552. ADMINISTRATIVE PENALTY. (a) The board may  
6-12 impose an administrative penalty for a violation of this chapter or  
6-13 a rule adopted or order issued by the board under this chapter  
6-14 [Section 1103.518(2)(H)] in an amount not to exceed:

6-15 (1) \$1,500 for each violation; or

6-16 (2) \$5,000 for multiple violations [~~proved~~] in a  
6-17 single [one-contested] case.

6-18 (b) The person on whom the penalty is imposed shall pay the  
6-19 penalty not later than the 20th day after the date the order  
6-20 imposing the penalty becomes [of the] final [disposition of the  
6-21 contested case].

6-22 SECTION 24. Sections 1103.208 and 1103.209(b), Occupations  
6-23 Code, are repealed.

6-24 SECTION 25. The change in law made by this Act to Section  
6-25 1103.209(b), Occupations Code, applies only to an application for a  
6-26 reciprocal certificate or license that is submitted on or after the  
6-27 effective date of this Act. An application submitted before the  
6-28 effective date of this Act is governed by the law in effect on the  
6-29 date the application is submitted, and the former law is continued  
6-30 in effect for that purpose.

6-31 SECTION 26. The change in law made by Section 1103.2111,  
6-32 Occupations Code, as added by this Act, applies to the renewal of a  
6-33 certificate, license, or approval that expires on or after the  
6-34 effective date of this Act. A certificate, license, or approval  
6-35 that expires before the effective date of this Act is governed by  
6-36 the law in effect on the date the certificate, license, or approval  
6-37 expired, and the former law is continued in effect for that purpose.

6-38 SECTION 27. The change in law made by Sections 1103.5011 and  
6-39 1103.5012, Occupations Code, as added by this Act, applies only to a  
6-40 complaint filed on or after the effective date of this Act. A  
6-41 complaint filed before that date is governed by the law in effect on  
6-42 the date the complaint was filed, and the former law is continued in  
6-43 effect for that purpose.

6-44 SECTION 28. This Act takes effect immediately if it  
6-45 receives a vote of two-thirds of all the members elected to each  
6-46 house, as provided by Section 39, Article III, Texas Constitution.  
6-47 If this Act does not receive the vote necessary for immediate  
6-48 effect, this Act takes effect September 1, 2011.

6-49

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