

By: Carona
(Hamilton)

S.B. No. 747

Substitute the following for S.B. No. 747:

By: Quintanilla

C.S.S.B. No. 747

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the professions regulated by the Texas Real Estate
3 Commission.

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

5 SECTION 1. Section 1101.002, Occupations Code, is amended
6 by amending Subdivision (1) and adding Subdivision (1-a) to read as
7 follows:

8 (1) "Broker":

9 (A) means a person who, in exchange for a
10 commission or other valuable consideration or with the expectation
11 of receiving a commission or other valuable consideration, performs
12 for another person one of the following acts:

13 (i) sells, exchanges, purchases, or leases
14 real estate;

15 (ii) offers to sell, exchange, purchase, or
16 lease real estate;

17 (iii) negotiates or attempts to negotiate
18 the listing, sale, exchange, purchase, or lease of real estate;

19 (iv) lists or offers, attempts, or agrees
20 to list real estate for sale, lease, or exchange;

21 (v) ~~[appraises or offers, attempts, or~~
22 ~~agrees to appraise real estate,~~

23 [~~vi~~] auctions or offers, attempts, or
24 agrees to auction real estate;

1 (vi) [~~(vii)~~] deals in options on real
2 estate, including buying, selling, or offering to buy or sell
3 options on real estate;

4 (vii) [~~(viii)~~] aids or offers or attempts
5 to aid in locating or obtaining real estate for purchase or lease;

6 (viii) [~~(ix)~~] procures or assists in
7 procuring a prospect to effect the sale, exchange, or lease of real
8 estate; [~~or~~]

9 (ix) [~~(x)~~] procures or assists in procuring
10 property to effect the sale, exchange, or lease of real estate;

11 (x) controls the acceptance or deposit of
12 rent from a resident of a single-family residential real property
13 unit; or

14 (xi) provides a written analysis, opinion,
15 or conclusion relating to the estimated price of real property if
16 the analysis, opinion, or conclusion:

17 (a) is not referred to as an
18 appraisal;

19 (b) is provided in the ordinary course
20 of the person's business; and

21 (c) is related to the actual or
22 potential management, acquisition, disposition, or encumbrance of
23 an interest in real property; and

24 (B) includes a person who:

25 (i) is employed by or for an owner of real
26 estate to sell any portion of the real estate; or

27 (ii) engages in the business of charging an

1 advance fee or contracting to collect a fee under a contract that
2 requires the person primarily to promote the sale of real estate by:

3 (a) listing the real estate in a
4 publication primarily used for listing real estate; or

5 (b) referring information about the
6 real estate to brokers.

7 (1-a) "Business entity" means a "domestic entity" or
8 "foreign entity" as those terms are defined by Section 1.002,
9 Business Organizations Code.

10 SECTION 2. Section 1101.005, Occupations Code, is amended
11 to read as follows:

12 Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does
13 not apply to:

14 (1) an attorney licensed in this [~~any~~] state;

15 (2) an attorney-in-fact authorized under a power of
16 attorney to conduct a real estate transaction;

17 (3) a public official while engaged in official
18 duties;

19 (4) an auctioneer licensed under Chapter 1802 while
20 conducting the sale of real estate by auction if the auctioneer does
21 not perform another act of a broker or salesperson;

22 (5) a person conducting a real estate transaction
23 under a court order or the authority of a will or written trust
24 instrument;

25 (6) a person employed by an owner in the sale of
26 structures and land on which structures are located if the
27 structures are erected by the owner in the course of the owner's

1 business;

2 (7) an on-site manager of an apartment complex;

3 (8) an owner or the owner's employee who leases the
4 owner's improved or unimproved real estate; or

5 (9) ~~[a partnership or limited liability partnership
6 acting as a broker or salesperson through a partner who is a
7 licensed broker; or~~

8 ~~[(10)]~~ a transaction involving:

9 (A) the sale, lease, or transfer of a mineral or
10 mining interest in real property;

11 (B) the sale, lease, or transfer of a cemetery
12 lot;

13 (C) the lease or management of a hotel or motel;
14 or

15 (D) the sale of real property under a power of
16 sale conferred by a deed of trust or other contract lien.

17 SECTION 3. Subchapter D, Chapter 1101, Occupations Code, is
18 amended by adding Section 1101.161 to read as follows:

19 Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission
20 may solicit and accept a gift, grant, donation, or other item of
21 value from any source to pay for any activity under this chapter or
22 Chapter 1102 or 1103.

23 SECTION 4. Section 1101.301, Occupations Code, is amended
24 by amending Subsection (c) and adding Subsection (d) to read as
25 follows:

26 (c) In establishing accreditation standards for an
27 educational program under Subsection (a), the commission shall

1 adopt rules setting an examination passage rate benchmark for each
2 category of license issued by the commission under this chapter or
3 Chapter 1102. The benchmark must be based on the average percentage
4 of examinees that pass the licensing exam on the first attempt. A
5 program must meet or exceed the benchmark for each license category
6 ~~[that require a program to establish that at least 55 percent of the~~
7 ~~program's graduates have passed a licensing exam the first time the~~
8 ~~exam has been taken by the graduates]~~ before the commission may
9 renew the program's accreditation for the license category.

10 (d) The commission may deny an application for
11 accreditation if the applicant owns or controls, or has previously
12 owned or controlled, an educational program or course of study for
13 which accreditation was revoked.

14 SECTION 5. Section 1101.351, Occupations Code, is amended
15 by adding Subsection (a-1) to read as follows:

16 (a-1) Unless a business entity holds a license issued under
17 this chapter, the business entity may not act as a broker.

18 SECTION 6. Section 1101.352, Occupations Code, is amended
19 by adding Subsection (d) to read as follows:

20 (d) At the time an application is submitted under Subsection
21 (a), each applicant shall provide the commission with the
22 applicant's current mailing address and telephone number, and
23 e-mail address if available. The applicant shall notify the
24 commission of any change in the applicant's mailing or e-mail
25 address or telephone number during the time the application is
26 pending.

27 SECTION 7. Section 1101.355, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS
3 FOR ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To be eligible for a license
4 under this chapter, a business entity must:

5 (1) ~~[a corporation must]~~ designate one of its managing
6 officers as its agent for purposes of this chapter; and

7 (2) provide proof that the entity maintains errors and
8 omissions insurance with a minimum annual limit of \$1 million for
9 each occurrence if the designated agent owns less than 10 percent of
10 the business entity ~~[a limited liability company must designate one~~
11 ~~of its managers as its agent for purposes of this chapter].~~

12 (b) A business entity ~~[corporation or limited liability~~
13 ~~company]~~ may not act as a broker unless the entity's designated
14 agent is a licensed broker in active status and good standing
15 according to the commission's records.

16 (c) A business entity that receives compensation on behalf
17 of a license holder must be licensed as a broker under this chapter.

18 SECTION 8. Section 1101.356, Occupations Code, is amended
19 by amending Subsection (a) and adding Subsection (b-1) to read as
20 follows:

21 (a) An applicant for a broker license must provide to the
22 commission satisfactory evidence that the applicant:

23 (1) has had at least four ~~[two]~~ years of active
24 experience in this state as a license holder during the 60 ~~[36]~~
25 months preceding the date the application is filed; and

26 (2) has successfully completed at least 60 semester
27 hours, or equivalent classroom hours, of postsecondary education,

1 including:

2 (A) at least 18 semester hours or equivalent
3 classroom hours of core real estate courses, two semester hours of
4 which must be real estate brokerage; and

5 (B) at least 42 hours of core real estate courses
6 or related courses accepted by the commission.

7 (b-1) The commission by rule shall establish what
8 constitutes active experience for purposes of this section and
9 Section 1101.357.

10 SECTION 9. Section 1101.357, Occupations Code, is amended
11 to read as follows:

12 Sec. 1101.357. BROKER LICENSE: ALTERNATE EXPERIENCE
13 REQUIREMENTS FOR CERTAIN APPLICANTS. An applicant for a broker
14 license who does not satisfy the experience requirements of Section
15 1101.356 must provide to the commission satisfactory evidence that:

16 (1) the applicant:

17 (A) is a licensed real estate broker in another
18 state;

19 (B) has had at least four [~~two~~] years of active
20 experience in that state as a licensed real estate broker or
21 salesperson during the 60 [~~36~~] months preceding the date the
22 application is filed; and

23 (C) has satisfied the educational requirements
24 prescribed by Section 1101.356; or

25 (2) the applicant was licensed in this state as a
26 broker in the year preceding the date the application is filed.

27 SECTION 10. Section 1101.358, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.358. SALESPERSON LICENSE: EDUCATION
3 REQUIREMENTS. (a) An applicant for a salesperson license must
4 provide to the commission satisfactory evidence that the applicant
5 has completed at least 12 [~~14~~] semester hours, or equivalent
6 classroom hours, of postsecondary education consisting of [~~7~~
7 ~~including~~]:

8 (1) at least four semester hours of core real estate
9 courses on principles of real estate; and

10 (2) at least two semester hours of each of the
11 following core real estate courses:

12 (A) agency law;

13 (B) contract law; [~~and~~]

14 (C) contract forms and addendums; and

15 (D) real estate finance [~~one additional core real~~
16 ~~estate course; and~~

17 [~~(3) at least four semester hours of core real estate~~
18 ~~courses or related courses].~~

19 (b) The commission shall waive the education requirements
20 of Subsection (a) if the applicant has been licensed in this state
21 as a broker or salesperson within the six months [~~year~~] preceding
22 the date the application is filed.

23 (c) If an applicant for a salesperson license was licensed
24 as a salesperson within the six months [~~year~~] preceding the date the
25 application is filed and the license was issued under the
26 conditions prescribed by Section 1101.454, the commission shall
27 require the applicant to provide the evidence of successful

1 completion of education requirements that would have been required
2 if the license had been maintained without interruption during the
3 preceding six months [~~year~~].

4 SECTION 11. Section 1101.367(c), Occupations Code, is
5 amended to read as follows:

6 (c) As a condition of returning to active status, an
7 inactive salesperson whose license is not subject to the [~~annual~~]
8 education requirements of Section 1101.454 must provide to the
9 commission proof of attending at least 15 hours of continuing
10 education as specified by Section 1101.455 during the two years
11 preceding the date the application to return to active status is
12 filed.

13 SECTION 12. Section 1101.401(f), Occupations Code, is
14 amended to read as follows:

15 (f) An applicant must satisfy the examination requirement
16 not later than one year [~~six months~~] after the date the license
17 application is filed.

18 SECTION 13. Sections 1101.451(e) and (f), Occupations Code,
19 are amended to read as follows:

20 (e) A person whose license has been expired for 90 days or
21 less may renew the license by paying to the commission a fee equal
22 to 1-1/2 times the required renewal fee. If a license has been
23 expired for more than 90 days but less than six months [~~one year~~],
24 the person may renew the license by paying to the commission a fee
25 equal to two times the required renewal fee.

26 (f) If a person's license has been expired for six months
27 [~~one year~~] or longer, the person may not renew the license. The

1 person may obtain a new license by submitting to reexamination and
2 complying with the requirements and procedures for obtaining an
3 original license.

4 SECTION 14. Section 1101.452(a), Occupations Code, is
5 amended to read as follows:

6 (a) To renew an active license that is not subject to the
7 ~~[annual]~~ education requirements of Section 1101.454, the license
8 holder must provide to the commission proof of compliance with the
9 continuing education requirements of Section 1101.455.

10 SECTION 15. Section 1101.453, Occupations Code, is amended
11 to read as follows:

12 Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR
13 ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To renew a license under this
14 chapter, a business entity must:

15 (1) ~~[a corporation must]~~ designate one of its managing
16 officers as its agent for purposes of this chapter; and

17 (2) provide proof that the entity maintains errors and
18 omissions insurance with a minimum annual limit of \$1 million for
19 each occurrence if the designated agent owns less than 10 percent of
20 the business entity ~~[a limited liability company must designate one~~
21 ~~of its managers as its agent for purposes of this chapter].~~

22 (b) A business entity ~~[corporation or limited liability~~
23 ~~company]~~ may not act as a broker unless the entity's designated
24 agent is a licensed broker in active status and good standing
25 according to the commission's records.

26 SECTION 16. Section 1101.454(a), Occupations Code, is
27 amended to read as follows:

1 (a) An applicant applying for the first renewal of a
2 salesperson license must provide to the commission satisfactory
3 evidence of completion of at least 18 semester hours, or equivalent
4 classroom hours, [~~of postsecondary education, including 14 hours~~]
5 of core real estate courses.

6 SECTION 17. Section 1101.455(b), Occupations Code, is
7 amended to read as follows:

8 (b) A license holder who is not subject to the [~~annual~~]
9 education requirements of Section 1101.454 must attend during the
10 term of the current license at least 15 classroom hours of
11 continuing education courses approved by the commission.

12 SECTION 18. Subchapter J, Chapter 1101, Occupations Code,
13 is amended by adding Section 1101.458 to read as follows:

14 Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR
15 CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson,
16 or a license holder who supervises another license holder, must
17 attend during the term of the current license at least six classroom
18 hours of broker responsibility education courses approved by the
19 commission.

20 (b) The commission by rule shall prescribe the title,
21 content, and duration of broker responsibility education courses
22 required under this section.

23 (c) Broker responsibility education course hours may be
24 used to satisfy the hours described by Section 1101.455(f).

25 (d) This section does not apply to a broker who is exempt
26 from continuing education requirements under Section 1101.456.

27 SECTION 19. Section 1101.502(b), Occupations Code, is

1 amended to read as follows:

2 (b) To be eligible to receive a certificate of registration
3 or a renewal certificate under this subchapter, a business
4 [~~corporation, limited liability company, partnership, limited~~
5 ~~liability partnership, or other~~] entity must designate as its agent
6 one of its managing officers[~~, partners, or managers~~] who is
7 registered under this subchapter.

8 SECTION 20. Subchapter K, Chapter 1101, Occupations Code,
9 is amended by adding Section 1101.5041 to read as follows:

10 Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION
11 REQUIREMENT FOR CERTIFICATE. An applicant for an original
12 certificate of registration or renewal of a certificate of
13 registration must comply with the criminal history record check
14 requirements of Section 1101.3521.

15 SECTION 21. Section 1101.552, Occupations Code, is amended
16 by adding Subsection (e) to read as follows:

17 (e) A license holder shall provide the commission with the
18 license holder's current mailing address and telephone number, and
19 e-mail address if available. A license holder shall notify the
20 commission of a change in the license holder's mailing or e-mail
21 address or telephone number.

22 SECTION 22. Section 1101.554, Occupations Code, is amended
23 to read as follows:

24 Sec. 1101.554. COPY [~~CUSTODY~~] OF SALESPERSON LICENSE.
25 [~~(a)~~] The commission shall deliver or mail a copy of each
26 salesperson license to the broker with whom the salesperson is
27 associated.

1 ~~[(b) The broker shall keep the license under the broker's~~
2 ~~custody and control.]~~

3 SECTION 23. Subchapter N, Chapter 1101, Occupations Code,
4 is amended by adding Section 1101.6561 to read as follows:

5 Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL
6 PROGRAM ACCREDITATION. The commission may suspend or revoke an
7 accreditation issued under Subchapter G or take any other
8 disciplinary action authorized by this chapter if the provider of
9 an educational program or course of study violates this chapter or a
10 rule adopted under this chapter.

11 SECTION 24. Section 1101.356(c), Occupations Code, is
12 repealed.

13 SECTION 25. (a) Not later than December 1, 2011, the Texas
14 Real Estate Commission shall adopt rules necessary to implement
15 Section 1101.301, Occupations Code, as amended by this Act, and
16 Sections 1101.356(b-1) and 1101.458, Occupations Code, as added by
17 this Act.

18 (b) Section 1101.552(e), Occupations Code, as added by this
19 Act, applies only to a broker or salesperson license issued or
20 renewed on or after December 1, 2011. A license issued or renewed
21 before that date is governed by the law in effect immediately before
22 the effective date of this Act, and the former law is continued in
23 effect for that purpose.

24 (c) Section 1101.502(b), Occupations Code, as amended by
25 this Act, and Section 1101.5041, Occupations Code, as added by this
26 Act, apply only to an application for a certificate of registration
27 or renewal of a certificate of registration filed with the Texas

1 Real Estate Commission on or after December 1, 2011. An application
2 filed before that date is governed by the law in effect immediately
3 before the effective date of this Act, and the former law is
4 continued in effect for that purpose.

5 (d) Section 1101.458, Occupations Code, as added by this
6 Act, applies only to a license issued or renewed on or after
7 September 1, 2012. A license issued or renewed before that date is
8 governed by the law in effect immediately before the effective date
9 of this Act, and the former law is continued in effect for that
10 purpose.

11 (e) Sections 1101.352, 1101.355, and 1101.401, Occupations
12 Code, as amended by this Act, apply only to an application for a
13 real estate broker or salesperson license submitted to the Texas
14 Real Estate Commission on or after the effective date of this Act.
15 An application for a license submitted before that date is governed
16 by the law in effect on the date the application was submitted, and
17 the former law is continued in effect for that purpose.

18 (f) Sections 1101.356 and 1101.357, Occupations Code, as
19 amended by this Act, apply only to an application for a real estate
20 broker license submitted to the Texas Real Estate Commission on or
21 after January 1, 2012. An application for a license submitted
22 before that date is governed by the law in effect immediately before
23 the effective date of this Act, and the former law is continued in
24 effect for that purpose.

25 (g) Section 1101.358, Occupations Code, as amended by this
26 Act, applies only to an application for a real estate salesperson
27 license submitted to the Texas Real Estate Commission on or after

1 September 1, 2012. An application for a license submitted before
2 that date is governed by the law in effect immediately before the
3 effective date of this Act, and the former law is continued in
4 effect for that purpose.

5 (h) Section 1101.454, Occupations Code, as amended by this
6 Act, applies only to the renewal of a real estate salesperson
7 license that expires on or after September 1, 2012. A license that
8 expires before that date is governed by the law in effect
9 immediately before the effective date of this Act, and the former
10 law is continued in effect for that purpose.

11 (i) Sections 1101.451 and 1101.453, Occupations Code, as
12 amended by this Act, apply only to the renewal of a real estate
13 broker or salesperson license that expires on or after the
14 effective date of this Act. A license that expires before that date
15 is governed by the law in effect on the date the license expires,
16 and the former law is continued in effect for that purpose.

17 (j) A person who holds a license as a real estate broker
18 issued before the effective date of this Act may continue to renew
19 that license without complying with the changes in law made by this
20 Act to Sections 1101.356 and 1101.357, Occupations Code.

21 (k) Sections 1101.002 and 1101.005, Occupations Code, as
22 amended by this Act, apply, with respect to conduct that
23 constitutes acting as a broker or salesperson under Chapter 1101,
24 Occupations Code, only to conduct engaged in on or after the
25 effective date of this Act. Conduct engaged in before the effective
26 date of this Act is governed by the law in effect when the conduct
27 was engaged in, and the former law is continued in effect for that

1 purpose.

2 SECTION 26. This Act takes effect September 1, 2011.