

By: Carona

S.B. No. 1171

A BILL TO BE ENTITLED

AN ACT

relating to practices and professions regulated by the Texas Appraiser Licensing and Certification Board.

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

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

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

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

(2) enforce standards for the appraisal of real property.

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

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

(A) an opinion ~~[estimate]~~ of value; or

(B) the act or process of developing an opinion of ~~[estimating]~~ value.

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

(b) This chapter does not prohibit:

(1) a person authorized by law from performing an

1 evaluation of real property for or providing an evaluation of real
2 property to another person; or

3 (2) ~~[a real estate broker or salesperson licensed~~
4 ~~under Chapter 1101 but not certified or licensed under this chapter~~
5 ~~from performing an appraisal in a transaction other than a~~
6 ~~federally related transaction;~~

7 ~~[(3) the requirement that a person who is not~~
8 ~~certified or licensed under this chapter be licensed as a real~~
9 ~~estate broker or salesperson to perform an appraisal in a~~
10 ~~transaction other than a federally related transaction; or~~

11 ~~[(4)]~~ a real estate broker ~~[or salesperson]~~ licensed
12 under Chapter 1101 or a salesperson acting under the authority of a
13 sponsoring broker from providing to another person a written
14 analysis, [giving an] opinion, or conclusion relating to the
15 estimated price of real property if the analysis, [if the] opinion,
16 or conclusion:

17 (A) is not referred to as an appraisal; ~~[and]~~

18 (B) is given in the ordinary course of the
19 broker's or salesperson's business; and

20 (C) is related to the actual or potential
21 acquisition, disposition, encumbrance, or management of an
22 interest in [to:

23 ~~[(i) a potential seller or third party~~
24 ~~regarding the recommended listing price of real property; or~~

25 ~~[(ii) a potential purchaser or third party~~
26 ~~regarding the recommended purchase price of]~~ real property.

27 SECTION 4. Section 1103.101(b), Occupations Code, is

1 amended to read as follows:

2 (b) The board may delegate to the commissioner the
3 responsibility for administering this chapter, including the
4 approval of consent orders and agreements.

5 SECTION 5. Section 1103.151, Occupations Code, is amended
6 to read as follows:

7 Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES.
8 The board may adopt:

9 (1) rules for certifying or licensing an appraiser or
10 approving an appraiser trainee in this state that are in accordance
11 with this chapter and consistent with applicable federal law;

12 (2) rules relating to the education and experience
13 required for certifying or licensing an appraiser or approving an
14 appraiser trainee that are consistent with the guidelines
15 recognized by the Appraiser Qualifications Board;

16 (3) rules relating to the examination required by
17 Subchapter F; and

18 (4) rules relating to procedures for the timely
19 renewal of a certificate, [or] license, or trainee approval.

20 SECTION 6. Section 1103.156(a), Occupations Code, is
21 amended to read as follows:

22 (a) The board may establish reasonable fees to administer
23 this chapter, including:

24 (1) an application fee for a certificate or license;

25 (2) an examination fee;

26 (3) a renewal fee for a certificate or license;

27 (4) a registration fee for a nonresident real estate

1 appraiser;

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

3 (6) a [~~an annual~~] renewal fee for an appraiser
4 trainee;

5 (7) a fee for filing a request for a return to active
6 status; and

7 (8) other appropriate fees.

8 SECTION 7. Subchapter D, Chapter 1103, Occupations Code, is
9 amended by adding Sections 1103.157 and 1103.158 to read as
10 follows:

11 Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. The board may
12 solicit, accept, and administer gifts, grants, and donations of any
13 kind from any public or private source for the purposes of this
14 chapter.

15 Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER.
16 Notwithstanding Section 572.051, Government Code, a board member
17 may testify as an expert witness in an action concerning a violation
18 of the Uniform Standards of Professional Appraisal Practice.

19 SECTION 8. Section 1103.201, Occupations Code, is amended
20 to read as follows:

21 Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A
22 [~~Unless the person is certified under this chapter, a~~] person may
23 not perform an appraisal of real estate unless the person is
24 licensed or certified as an appraiser under this chapter,
25 registered as a temporary out-of-state appraiser under this
26 chapter, or acting as an appraiser trainee under the sponsorship of
27 a certified appraiser. [+]

1 ~~[(1) use the title "state-certified real estate~~
2 ~~appraiser"; or~~

3 ~~[(2) refer to an appraisal prepared by the person as a~~
4 ~~"certified appraisal."]~~

5 (b) Unless the person holds the appropriate license or
6 certification ~~[is licensed under this chapter]~~, a person may not:

7 (1) use the title "state-certified real estate
8 appraiser" or "state-licensed real estate appraiser"; or

9 (2) refer to an appraisal performed ~~[prepared]~~ by the
10 person as a "certified appraisal" or "licensed appraisal."

11 SECTION 9. Subchapter E, Chapter 1103, Occupations Code, is
12 amended by adding Section 1103.2015 to read as follows:

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

17 SECTION 10. Section 1103.206(b), Occupations Code, is
18 amended to read as follows:

19 (b) The board shall adopt a reliable method to verify the
20 evidence of appraisal experience submitted by an applicant for a
21 certificate or license. The method must include the review of
22 appraisal experience of all applicants for certification and must
23 rely on appropriate sampling techniques that are applied to not
24 more than five percent of the license applications received by the
25 board. An applicant whose application is selected for verification
26 has at least 60 days after the date of selection to prepare any
27 records requested by the board. The board may not require the

1 applicant to provide more information than the information the
2 board may obtain under Section 1103.207.

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

5 (a) The board shall ~~[may]~~ issue a reciprocal certificate or
6 license to an applicant from another state if:

7 (1) the appraiser licensing and certification program
8 of the other state is in compliance with 12 U.S.C. Section 3331 et
9 seq.;

10 (2) the appraiser holds a valid license or certificate
11 from a state whose requirements for licensure or certification meet
12 or exceed the licensure or certification requirements of this
13 state; and

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

22 (e) An applicant for a certificate or license under this
23 chapter who is not a resident of this state must submit with the
24 application an irrevocable consent that states that service of
25 process in an action against the applicant arising out of the
26 applicant's activities as a certified or licensed appraiser in this
27 state may be made by delivery of the process to the commissioner if

the plaintiff in the action, using due diligence, cannot obtain personal service on the applicant. If process is served as provided by this subsection, the commissioner shall immediately send a copy of the material served on the commissioner [~~by regular mail~~] to the certified or licensed appraiser at the appraiser's address of record [~~principal place of business and residence address~~].

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

(g) A reciprocal certificate or license expires on the second anniversary of the last day of the month in which it was ~~earlier of:~~

~~[(1) the expiration date of the certificate or license held by the applicant in the state in which the applicant is certified or licensed, or~~

~~[(2) the first anniversary of the date the reciprocal certificate or license is] issued.~~

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

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

(b) The board by rule shall adopt reasonable terms for issuing a probationary certificate or license and for approval of

1 an appraiser trainee on a probationary basis.

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

6 SECTION 13. Subchapter E, Chapter 1103, Occupations Code,
7 is amended by adding Section 1103.2111 to read as follows:

8 Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE, LICENSE, OR
9 TRAINEE APPROVAL. (a) A person whose certificate, license, or
10 approval has been expired for 90 days or less may renew the
11 certificate, license, or approval by paying to the board a fee equal
12 to 1-1/2 times the required renewal fee. If a certificate, license,
13 or approval has been expired for more than 90 days but less than six
14 months, the person may renew the certificate, license, or approval
15 by paying to the board a fee equal to two times the required renewal
16 fee.

17 (b) A certificate, license, or approval that is renewed
18 under this section shall expire on the date that would apply had the
19 certificate, license, or approval been timely renewed.

20 (c) A person may not perform an appraisal in a federally
21 related transaction while the person is not actively licensed or
22 certified as an appraiser.

23 (d) If a person's certificate, license, or approval has been
24 expired six months or longer, the person may not renew the
25 certificate, license, or approval. The person may obtain a new
26 certificate, license, or approval by complying with the
27 requirements and procedures for an original application.

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

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

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

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

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

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

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

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

Sec. 1103.403. CONTACT INFORMATION ~~[OFFICE LOCATION]~~.

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

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

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

~~[(2)]~~ pay any required ~~[a]~~ fee ~~[set by the board]~~.

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

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

(1) a summary of the alleged violation;

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

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

(b) Not later than the 20th day after the date the person receives the notice under Subsection (a), the person may:

(1) accept the commissioner's determination,

1 including the recommended sanction; or

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

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

10 SECTION 20. Section 1103.518, Occupations Code, is amended
11 to read as follows:

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

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

16 (2) issue to the board a proposal for decision that the
17 board take one or more of the following actions:

18 (A) dismiss the charges~~[, including issuing an~~
19 ~~order declaring that the case file is confidential]~~;

20 (B) suspend or revoke the appraiser's
21 certificate or license or the appraiser trainee's approval;

22 (C) impose a period of probation with or without
23 conditions;

24 (D) require the appraiser to submit to
25 reexamination for a certificate or license;

26 (E) require the appraiser or appraiser trainee to
27 participate in additional professional education or continuing

1 education;

2 (F) issue a public or private reprimand or a
3 warning;

4 (G) issue a consent order; or

5 (H) impose an administrative penalty as
6 prescribed by Section 1103.552.

7 SECTION 21. Section 1103.522, Occupations Code, is amended
8 to read as follows:

9 Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE.

10 ~~[(a)]~~ A person whose certificate or license has been ~~[suspended or]~~
11 revoked or a person who has surrendered a certificate or license
12 issued by the board may not apply to the board for reinstatement
13 until the second anniversary of the date of ~~[as provided by the~~
14 ~~order of suspension or]~~ revocation or surrender.

15 ~~[(b) If the order does not establish terms for~~
16 ~~reinstatement, the appraiser may not:~~

17 ~~[(1) make an initial application for reinstatement~~
18 ~~until the first anniversary of the effective date of the order; or~~

19 ~~[(2) make subsequent applications more often than once~~
20 ~~every two years.]~~

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

23 Sec. 1103.5511. TEMPORARY SUSPENSION. (a) The presiding
24 officer of the board shall appoint a disciplinary panel consisting
25 of three board members to determine whether a person's license or
26 certification to practice under this chapter should be temporarily
27 suspended.

1 (b) If the disciplinary panel determines from the
2 information presented to the panel that a person licensed or
3 certified to practice under this chapter would, by the person's
4 continued practice, constitute a continuing threat to the public
5 welfare, the panel shall temporarily suspend the license or
6 certification of that person.

7 (c) A license or certification may be suspended under this
8 section without notice or hearing on the complaint if:

9 (1) institution of proceedings for a contested case
10 hearing is initiated simultaneously with the temporary suspension;
11 and

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

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

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

22 SECTION 23. Section 1103.552, Occupations Code, is amended
23 to read as follows:

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

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

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

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

8 SECTION 24. Sections 1103.208 and 1103.209(b), Occupations
9 Code, are repealed.

10 SECTION 25. The change in law made by this Act to Section
11 1103.209(b), Occupations Code, applies only to an application for a
12 reciprocal certificate or license that is submitted on or after the
13 effective date of this Act. An application submitted before the
14 effective date of this Act is governed by the law in effect on the
15 date the application is submitted, and the former law is continued
16 in effect for that purpose.

17 SECTION 26. The change in law made by Section 1103.2111,
18 Occupations Code, as added by this Act, applies to the renewal of a
19 certificate, license, or approval that expires on or after the
20 effective date of this Act. A certificate, license, or approval
21 that expires before the effective date of this Act is governed by
22 the law in effect on the date the certificate, license, or approval
23 expired, and the former law is continued in effect for that purpose.

24 SECTION 27. The change in law made by Sections 1103.5011 and
25 1103.5012, Occupations Code, as added by this Act, applies only to a
26 complaint filed on or after the effective date of this Act. A
27 complaint filed before that date is governed by the law in effect on

1 the date the complaint was filed, and the former law is continued in
2 effect for that purpose.

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