

Amend CSSB 740 (senate committee printing) as follows:

(1) Strike SECTIONS 2, 3, and 4 of the bill, amending Sections 1101.501 and 1101.502(a), Occupations Code, and adding Sections 1101.5021, 1101.5042, and 1101.5043, Occupations Code (page 1, line 52, through page 2, line 44).

(2) Add the following appropriately numbered SECTIONS to the bill, and renumber the SECTIONS of the bill accordingly:

SECTION _____. Section 1101.002, Occupations Code, is amended by amending Subdivision (4) and adding Subdivisions (4-a), (6-a), and (6-b) to read as follows:

(4) "License" means a broker license or sales agent license issued under this chapter. The term does not include a right-of-way agent license.

(4-a) "License holder" means a broker or sales agent licensed under this chapter. The term does not include a holder of a right-of-way agent license.

(6-a) "Right-of-way agent license" means a license issued under Subchapter K.

(6-b) "Right-of-way agent license holder" means a person licensed under Subchapter K.

SECTION _____. Section 1101.151(a), Occupations Code, is amended to read as follows:

(a) The commission shall:

(1) administer this chapter and Chapter 1102;

(2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;

(3) maintain a list of right-of-way agent license [~~registry of certificate~~] holders; and

(4) design and adopt a seal.

SECTION _____. Section 1101.152(a), Occupations Code, is amended to read as follows:

(a) The commission shall adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for:

(1) filing an original application for a broker license;

- (2) renewal of a broker license;
- (3) filing an original application for a sales agent license;
- (4) renewal of a sales agent license;
- (5) filing an original application for a [~~registration as an easement or~~] right-of-way agent license;
- (5-a) renewal of a right-of-way agent license;
- (6) filing an application for a license examination;
- (7) filing a request for a branch office license;
- (8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;
- (9) filing a request to replace a lost or destroyed license or right-of-way agent license [~~or certificate of registration~~];
- (10) filing an application for approval of an education program under Subchapter G;
- (11) annual operation of an education program under Subchapter G;
- (12) filing an application for approval of an instructor of qualifying real estate courses;
- (13) transcript evaluation;
- (14) preparing a license [~~or registration~~] history;
- (15) filing a request for a moral character determination; and
- (16) conducting a criminal history check for issuing or renewing a license.

SECTION _____. Section 1101.154(a), Occupations Code, is amended to read as follows:

- (a) The fee for the issuance or renewal of a:
 - (1) broker license is the amount of the fee set under Section 1101.152 and an additional \$70 fee;
 - (2) sales agent license is the amount of the fee set under Section 1101.152 and an additional \$20 fee; and
 - (3) right-of-way agent license [~~certificate of registration~~] is the amount of the fee set under Section 1101.152 and an additional \$20 fee.

SECTION _____. Section 1101.205, Occupations Code, is amended to read as follows:

Sec. 1101.205. COMPLAINT INVESTIGATION OF RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~] HOLDER. The commission shall investigate a signed complaint received by the commission that relates to an act of a right-of-way agent license [~~certificate~~] holder or a person required to hold a right-of-way agent license [~~certificate~~] under Subchapter K. Section 1101.204 applies to an investigation under this section.

SECTION _____. Subchapter K, Chapter 1101, Occupations Code, is amended to read as follows:

SUBCHAPTER K. RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]

REQUIREMENTS

Sec. 1101.501. RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~] REQUIRED. (a) A person may not sell, buy, lease, or transfer an easement or right-of-way [~~for another,~~] for compensation or with the expectation of receiving compensation[~~7~~] for an entity with eminent domain authority or for use in connection with telecommunication, utility, railroad, or pipeline service unless the person:

(1) holds a broker license or sales agent license issued under this chapter; or

(2) holds a right-of-way agent license [~~certificate of registration~~] issued under this subchapter.

(b) Subsection (a) does not apply to:

(1) an entity with eminent domain authority or the entity's employee; or

(2) an attorney licensed in this state.

Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. (a) To be eligible to receive or renew a right-of-way agent license [~~a certificate of registration or a renewal certificate under this subchapter~~], a person must [~~be~~]:

(1) be, at the time of application:

(A) at least 18 years of age; and

(B) [~~(2)~~] a citizen of the United States or a lawfully admitted alien;

(2) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity; and

(3) complete the required courses of study, including qualifying education requirements, prescribed by this subchapter.

(b) To be eligible to receive or renew a right-of-way agent license [~~a certificate of registration or a renewal certificate under this subchapter~~], a business entity must designate as its agent one of its managing officers who holds a right-of-way agent license issued [~~is registered~~] under this subchapter.

Sec. 1101.503. ISSUANCE OF RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. (a) The commission shall issue a right-of-way agent license [~~certificate of registration~~] to an applicant who meets the requirements for a right-of-way agent license under this subchapter [~~certificate of registration~~].

(b) The right-of-way agent license [~~certificate~~] remains in effect for the period prescribed by the commission if the right-of-way agent license [~~certificate~~] holder complies with this chapter, including the requirements of this subchapter, and pays the appropriate renewal fees.

Sec. 1101.504. RIGHT-OF-WAY AGENT LICENSE DURATION, [CERTIFICATE] EXPIRATION, AND RENEWAL. The provisions of Section 1101.451 governing the duration, expiration, and renewal of a broker or sales agent license apply [~~certificate of registration are subject to the same provisions as are applicable under Section 1101.451~~] to the duration, expiration, and renewal of a right-of-way agent license issued under this subchapter.

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. An applicant for an original [~~certificate of registration~~] or renewal right-of-way agent license [~~of a certificate of registration~~] must comply with the criminal history record check requirements of Section 1101.3521.

Sec. 1101.505. DENIAL OF RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. The denial of a right-of-way agent license [~~certificate of registration~~] is subject to the same provisions as are applicable under Section 1101.364 to the denial of a broker or sales agent license.

Sec. 1101.506. CHANGE OF ADDRESS. Not later than the 10th day after the date a right-of-way agent license [~~certificate~~] holder moves its place of business from a previously designated address, the right-of-way agent license holder shall:

(1) notify the commission of the move; and

(2) obtain a new right-of-way agent license [~~certificate of registration~~] that reflects the address of the new place of business.

Sec. 1101.507. DISPLAY OF RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. A right-of-way agent license [~~certificate~~] holder shall prominently display at all times the holder's right-of-way agent license [~~certificate of registration~~] in the right-of-way agent license holder's place of business.

Sec. 1101.508. NOTICE TO CONSUMERS. The commission by rule may:

(1) prescribe the text of consumer notices regarding a right-of-way agent license holder; and

(2) establish the methods by which a right-of-way agent license holder provides a consumer notice or the statement prepared and provided under Section 402.031, Government Code.

Sec 1101.509. QUALIFYING EDUCATION REQUIREMENTS. (a) The commission by rule shall approve coursework that an applicant must successfully complete to be eligible for a right-of-way agent license under this subchapter.

(b) An applicant for a right-of-way agent license shall submit evidence satisfactory to the commission that the applicant has completed at least 15 classroom hours of right-of-way agent coursework approved by the commission in:

(1) the law of eminent domain, including the rights of property owners;

(2) appropriate standards of professionalism in contacting and conducting negotiations with property owners; and

(3) ethical considerations in the performance of right-of-way acquisition services.

Sec. 1101.510. CONTINUING EDUCATION. (a) To be eligible to renew a right-of-way agent license, the right-of-way agent license holder must submit evidence satisfactory to the commission that the

right-of-way agent license holder successfully completed at least six classroom hours of continuing education approved by the commission.

(b) The commission by rule shall prescribe the title, content, administration, and duration of continuing education courses that a right-of-way agent license holder must successfully complete to renew a right-of-way agent license under this subchapter.

SECTION _____. Sections 1101.601 and 1101.602, Occupations Code, are amended to read as follows:

Sec. 1101.601. REAL ESTATE RECOVERY TRUST ACCOUNT. (a) The commission shall maintain a real estate recovery trust account to reimburse aggrieved persons who suffer actual damages caused by an act described by Section 1101.602 committed by:

(1) a license holder;

(2) a right-of-way agent license [~~certificate~~] holder; or

(3) a person who does not hold a license or right-of-way agent license [~~certificate~~] and who is an employee or agent of a license holder or right-of-way agent license [~~certificate~~] holder.

(b) The license holder or right-of-way agent license [~~certificate~~] holder must have held the license or right-of-way agent license [~~certificate~~] at the time the act was committed.

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. An aggrieved person is entitled to reimbursement from the trust account if a person described by Section 1101.601 engages in conduct that requires a license or right-of-way agent license [~~certificate of registration~~] under this chapter and is described by Section 1101.652(a-1)(1) or (b), if the person is a license holder, or Section 1101.653(1), (2), (3), or (4), if the person is a right-of-way agent license [~~certificate~~] holder.

SECTION _____. Sections 1101.603(a) and (e), Occupations Code, are amended to read as follows:

(a) In addition to other fees required by this chapter, the commission shall collect a fee of \$10 to deposit to the credit of the trust account from an applicant for an original license or

right-of-way agent license [~~certificate of registration~~].

(e) On a determination by the commission at any time that the balance in the trust account is less than \$1 million, each license holder or right-of-way agent license [~~certificate~~] holder at the next renewal must pay, in addition to the renewal fee, an additional fee of \$10. The commission shall deposit the additional fee to the credit of the trust account.

SECTION _____. Section 1101.605(b), Occupations Code, is amended to read as follows:

(b) When an aggrieved person brings an action for a judgment that may result in an agreed judgment and order for payment from the trust account, the aggrieved person and the license holder or right-of-way agent license [~~certificate~~] holder against whom the action is brought shall notify the commission in writing before entry of the agreed judgment and deliver a copy of all petitions and pleadings and the proposed agreed judgment to the commission. The commission will notify the parties not later than the 30th day after the date of receiving the documents if the commission intends to relitigate material and relevant issues as to the applicability of the trust account to the agreed judgment as provided by Section 1101.608.

SECTION _____. Section 1101.606(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsections (c) and (c-1), an aggrieved person who obtains a court judgment against a license holder or right-of-way agent license [~~certificate~~] holder for an act described by Section 1101.602 may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the judgment.

SECTION _____. Section 1101.607, Occupations Code, is amended to read as follows:

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the personal representative of the spouse;

(B) a license holder or right-of-way agent license [~~certificate~~] holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment; or

(C) related to the judgment debtor within the first degree by consanguinity;

(3) that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) the balance remaining due on the judgment after application of the amount under Subdivision (4).

SECTION _____. Sections 1101.610(b) and (c), Occupations Code, are amended to read as follows:

(b) Payments from the trust account for claims based on judgments against a single license holder or right-of-way agent license [~~certificate~~] holder may not exceed a total of \$100,000 until the license holder or right-of-way agent license [~~certificate~~] holder has reimbursed the trust account for all amounts paid.

(c) If the court finds that the total amount of claims against a license holder or right-of-way agent license [~~certificate~~] holder exceeds the limitations in this section, the court shall proportionately reduce the amount payable on each claim.

SECTION _____. Section 1101.613, Occupations Code, is amended to read as follows:

Sec. 1101.613. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter does not limit the commission's authority to take disciplinary action against a license holder or right-of-way agent license [~~certificate~~] holder for a violation of this chapter or a commission rule.

(b) A license holder's or right-of-way agent license

holder's [~~certificate holder's~~] repayment of all amounts owed to the trust account does not affect another disciplinary proceeding brought under this chapter.

SECTION _____. Section 1101.615, Occupations Code, is amended to read as follows:

Sec. 1101.615. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS. [~~a~~] The commission by rule shall prescribe a notice regarding the availability of payment from the trust account for aggrieved persons and establish methods by which each license holder and right-of-way agent license [~~certificate~~] holder shall provide the notice to consumers and service recipients.

SECTION _____. Section 1101.653, Occupations Code, is amended to read as follows:

Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~]. The commission may suspend or revoke a right-of-way agent license [~~certificate of registration~~] issued under this chapter if the right-of-way agent license [~~certificate~~] holder:

(1) engages in dishonest dealing, fraud, unlawful discrimination, or a deceptive act;

(2) makes a misrepresentation;

(3) acts in bad faith;

(4) demonstrates untrustworthiness;

(5) fails to honor, within a reasonable time, a check issued to the commission after the commission has mailed a request for payment to the right-of-way agent license [~~certificate~~] holder's last known address according to the commission's records;

(6) fails to provide to a party to a transaction a written notice prescribed by the commission that:

(A) must be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement; and

(B) contains:

(i) the name of the right-of-way agent license [~~certificate~~] holder;

(ii) the right-of-way agent license [~~certificate~~] number;

(iii) the name of the person the

right-of-way agent license [~~certificate~~] holder represents;

(iv) a statement advising the party that the party may seek representation from a lawyer or broker in the transaction; and

(v) a statement generally advising the party that the right-of-way or easement may affect the value of the property; or

(7) disregards or violates this chapter or a commission rule relating to right-of-way agent license [~~certificate~~] holders.

SECTION _____. Section 1101.654, Occupations Code, is amended to read as follows:

Sec. 1101.654. SUSPENSION OR REVOCATION OF LICENSE OR RIGHT-OF-WAY AGENT LICENSE [~~CERTIFICATE~~] FOR UNAUTHORIZED PRACTICE OF LAW. (a) The commission shall suspend or revoke the license or right-of-way agent license [~~certificate of registration~~] of a license holder or right-of-way agent license [~~certificate~~] holder who is not a licensed attorney in this state and who, for consideration, a reward, or a pecuniary benefit, present or anticipated, direct or indirect, or in connection with the person's employment, agency, or fiduciary relationship as a license holder or right-of-way agent license [~~certificate~~] holder:

(1) drafts an instrument, other than a form described by Section 1101.155, that transfers or otherwise affects an interest in real property; or

(2) advises a person regarding the validity or legal sufficiency of an instrument or the validity of title to real property.

(b) Notwithstanding any other law, a license holder or right-of-way agent license [~~certificate~~] holder who completes a contract form for the sale, exchange, option, or lease of an interest in real property incidental to acting as a broker is not engaged in the unauthorized or illegal practice of law in this state if the form was:

(1) adopted by the commission for the type of transaction for which the form is used;

(2) prepared by an attorney licensed in this state and

approved by the attorney for the type of transaction for which the form is used; or

(3) prepared by the property owner or by an attorney and required by the property owner.

SECTION _____. The heading to Section 1101.655, Occupations Code, is amended to read as follows:

Sec. 1101.655. REVOCATION OF LICENSE [~~OR CERTIFICATE~~] FOR CLAIM ON ACCOUNT.

SECTION _____. Sections 1101.655(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) The commission shall revoke a license, approval, or right-of-way agent license [~~registration~~] issued under this chapter or Chapter 1102 if:

(1) the commission makes a payment from the real estate recovery trust account under Subchapter M on behalf of a license holder or right-of-way agent license [~~registration~~] holder; and

(2) the license holder or right-of-way agent license [~~registration~~] holder does not repay the real estate recovery trust account the full amount of a payment made on the license holder's or right-of-way agent license [~~registration~~] holder's behalf before the 31st day after the date the commission provides notice to the license holder or right-of-way agent license [~~registration~~] holder.

(b) The commission may probate an order revoking a license, approval, or right-of-way agent license [~~registration~~] under this section.

(c) A person is not eligible for a license or right-of-way agent license [~~certificate~~] until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

SECTION _____. Section 1101.657(a), Occupations Code, is amended to read as follows:

(a) If the commission proposes to deny, suspend, or revoke a person's license or right-of-way agent license [~~certificate of registration~~], the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

SECTION _____. Section 1101.660(b), Occupations Code, is amended to read as follows:

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, right-of-way agent license [~~certificate~~] holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

SECTION _____. Section 1101.663, Occupations Code, is amended to read as follows:

Sec. 1101.663. REAPPLYING AFTER REVOCATION, SURRENDER, OR DENIAL. A person whose license or right-of-way agent license [~~registration~~] has been revoked, a person who has surrendered a license or right-of-way agent license [~~registration~~] issued by the commission, or a person whose application for a license or right-of-way agent license [~~registration~~] has been denied after a hearing under Section 1101.657 may not apply to the commission for a license or right-of-way agent license [~~registration~~] before the second anniversary of the date of the revocation, surrender, or denial.

SECTION _____. The heading to Section 1101.753, Occupations Code, is amended to read as follows:

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [~~CERTIFICATE HOLDER~~].

SECTION _____. Section 1101.753(a), Occupations Code, is amended to read as follows:

(a) In addition to injunctive relief under Sections 1101.751 and 1101.752, a person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or right-of-way agent license [~~certificate of registration~~] under this chapter is liable to the state for a civil penalty of not less than the amount of money received or more than three times the amount of money received.

SECTION _____. The heading to Section 1101.754, Occupations Code, is amended to read as follows:

Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [~~CERTIFICATE HOLDER~~].

SECTION _____. Section 1101.754(a), Occupations Code, is amended to read as follows:

(a) A person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or right-of-way agent license [~~certificate of registration~~] under this chapter is liable to an aggrieved person for a penalty of not less than the amount of money received or more than three times the amount of money received.

SECTION _____. The heading to Section 1101.758, Occupations Code, is amended to read as follows:

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR RIGHT-OF-WAY AGENT [~~CERTIFICATE HOLDER~~].

SECTION _____. Section 1101.758(a), Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person acts as a broker or sales agent without holding a license under this chapter or engages in an activity for which a right-of-way agent license [~~certificate of registration~~] is required under this chapter without holding a right-of-way agent license [~~certificate~~].

SECTION _____. Effective March 1, 2018, Section 1101.002(2), Occupations Code, is repealed.

(3) In SECTION 12 of the bill (page 5, line 67), strike "January" and substitute "September".

(4) In SECTION 13 of the bill (page 6, line 1), between "SECTION 13." and "(a)", insert the following, and reletter subsequent subsections of SECTION 13 accordingly:

(a) Chapter 1101, Occupations Code, as amended by this Act, applies only to an application for an original or renewal right-of-way agent license filed on or after March 1, 2018. An application for an original or renewal certificate of registration as an easement or right-of-way agent filed before March 1, 2018, is governed by the law in effect on the date the application was filed,

and the former law is continued in effect for that purpose.

(5) In SECTION 14 of the bill, strike Subsection (b) (page 6, lines 32-34) and substitute the following:

(b) Chapter 1101, Occupations Code, as amended by this Act, takes effect March 1, 2018.