

BILL ANALYSIS

Senate Research Center

S.B. 1516
By: Hancock
Business & Commerce
6/22/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill, through terminology corrections and the repeal of outdated provisions, is to align Texas statutes related to Appraisal Management Companies (AMCs) with existing federal (i.e., Dodd-Frank Wall Street Reform and Consumer Protection Act) and state (i.e., Occupations Code Chapter 1103 "Real Estate Appraisers," per updates from 84R S.B. 1007) regulations.

An AMC is a type of financial service firm that works with lenders and appraisers to facilitate the development and use of appraisal reports. AMCs are required by federal statutes to register with states and comply with state operating standards. S.B. 1516 updates several industry definitions and confirms that the scope of state regulations do not apply to federally regulated AMCs. The bill also aligns state laws with federal laws in areas of fee collection, ownership eligibility, primary contact listings, licensee employment opportunity, and audit requirements, among others.

S.B. 1516 amends current law relating to the registration and regulation of appraisal management companies, authorizes fees, and expands the applicability of an occupational registration.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Appraiser Licensing and Certification Board (TALCB) is modified in SECTION 5 (Section 1104.103, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TALCB in SECTION 26 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1104.003(b), Occupations Code, by adding Subdivision (6-a) to define "federally regulated appraisal management company."

SECTION 2. Amends Section 1104.004(a), Occupations Code, as follows:

(a) Provides that this chapter (Appraisal Management Companies) does not apply to an appraisal management company operating only in this state with an appraisal panel of not more than 15 appraisers at all times during a calendar year, or operating in multiple states, including this state, with an appraisal panel of not more than 24 appraisers in all states at all times during a calendar year; or subject to Section 1104.052(c), a federally regulated appraisal management company.

SECTION 3. Amends Section 1104.052, Occupations Code, by amending Subsections (b) and (c) and adding Subsections (d) and (e), as follows:

(b) Deletes existing text requiring the Texas Appraiser Licensing and Certification Board (TALCB) to deposit the registry fees to the credit of the appraiser registry account in the general revenue (GR) fund.

(c) Requires TALCB, notwithstanding Section 1104.004 (Exemptions), to collect from each federally regulated appraisal management company operating in this state:

- (1) the national registry fee required by the appraisal subcommittee;
- (2) information regarding the determination of the national registry fee as required by the appraisal subcommittee;
- (3) a fee in an amount that is sufficient for the administration of this subsection as established by TALCB rule; and
- (4) any other information required by state or federal law.

(d) Requires TALCB to deposit the national registry fees collected under this section to the credit of the appraiser registry account in the GR fund.

(e) Requires that the national registry fees collected under this section, rather than Subsection (b), be sent to the appraisal subcommittee regularly as required by federal law.

SECTION 4. Amends Section 1104.102(a), Occupations Code, as follows:

(a) Prohibits a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state from owning in any manner, rather than owning in any manner more than one percent of, an appraisal management company registered or applying for registration under this chapter unless the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive reason as determined by TALCB. Makes nonsubstantive changes.

SECTION 5. Amends Sections 1104.103(b) and (c), Occupations Code, as follows:

(b) Requires that the application contain certain contact information relating to the applicant and associated parties.

(c) Requires TALCB to adopt rules regarding registration and the renewal of a registration, rather than renewal of a registration, under this chapter.

SECTION 6. Amends Section 1104.104(b), Occupations Code, as follows:

(b) Prohibits the designated controlling person from having had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state unless the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive reason as determined by TALCB. Makes nonsubstantive changes.

SECTION 7. Amends Section 1104.105, Occupations Code, as follows:

Sec. 1104.105. New heading: DENIAL OF REGISTRATION OR RENEWAL. (a) Authorizes TALCB to deny an application for registration or registration renewal if an applicant fails to satisfy a requirement of this chapter, or on a determination by TALCB that there is reasonable evidence that any person who owns an interest in, rather than more than 10 percent of, the appraisal management company or any controlling person of the company has, rather than within the 24 months preceding the date of the application, had a license or certification as an appraiser or a registration as an appraisal management company suspended, revoked, or put on probation in any state. Makes nonsubstantive changes.

(b) Requires TALCB to immediately provide written notice to the applicant of TALCB's denial of a registration or of a registration renewal under this chapter.

(c) Provides that an appeal of the denial of a registration or of the renewal of a registration is governed by Chapter 2001 (Administrative Procedure), Government Code.

SECTION 8. Amends Section 1104.151(b), Occupations Code, as follows:

(b) Provides that an appraisal management company is not in violation of Subsection (a) (relating to certain prohibitions for an appraisal management company) if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has subsequently, rather than since that denial, revocation, or surrender, had the license or certificate granted or reinstated, and the license or certification was denied, revoked, or surrendered for a nonsubstantive reason as determined by TALCB. Makes nonsubstantive changes.

SECTION 9. Amends Section 1104.153, Occupations Code, as follows:

Sec. 1104.153. APPRAISAL REVIEW. Requires that a person who performs an appraisal review for an appraisal management company as required by Section 1104.155 (Professional Standards), be licensed as an appraiser under Chapter 1103 (Real Estate Appraisers), unless exempt by TALCB rule, and qualified to perform the appraisal being reviewed. Deletes existing text requiring that a person be licensed or certified under Chapter 1103 with at least the same certification for the property type as the appraiser who completed the report being reviewed.

SECTION 10. Amends Section 1104.156, Occupations Code, as follows:

Sec. 1104.156. BUSINESS RECORDS. (a) Replaces a reference to registered with required to register.

(b) Authorizes TALCB to audit the records of an appraisal management company required to register, rather than registered, under this chapter to ensure compliance with federal law, this chapter, TALCB rules, and the Uniform Standards of Professional Appraisal Practice.

(c) Makes a conforming change.

SECTION 11. Amends Section 1104.161(a), Occupations Code, as follows:

(a) Prohibits an appraisal management company from removing an appraiser from its panel, or otherwise refusing to assign requests for appraisal services to an appraiser without certain provisions. Deletes existing text relating to the first 30 days after the date an appraiser is first added to the appraisal panel of an appraisal management company.

SECTION 12. Amends Section 1104.201, Occupations Code, by adding Subsection (c), to authorize TALCB to report to the appraisal subcommittee any disciplinary action taken by TALCB against an appraisal management company required to register under this chapter.

SECTION 13. Amends Section 1104.202, Occupations Code, by adding Subsection (d), to require that an administrative penalty collected under this section, notwithstanding any other law, be deposited in a restricted fund maintained and operated by TALCB to develop educational programs for appraisers or to conduct studies that enhance consumer protection.

SECTION 14. Amends Section 1104.203, Occupations Code, by adding Subsection (a-1), to provide that for purposes of Subsection (a) (relating to certain prohibited practices of an appraisal management company or its personnel), a fee paid by an appraisal management company to an appraiser for appraisal services is not a financial benefit.

SECTION 15. Amends Section 1104.204(b), Occupations Code, as follows:

(b) Authorizes TALCB, on its own motion, to file a complaint against a controlling person, or a person who engages in an activity for which registration is required under this chapter without being registered. Makes nonsubstantive changes.

SECTION 16. Amends Section 1104.205, Occupations Code, by adding Subsection (d), to prohibit an investigation of an alleged violation by a person registered under this chapter from being terminated solely on the basis that the person fails to renew the registration.

SECTION 17. Amends Section 1104.208(a), Occupations Code, as follows:

(a) Authorizes TALCB, based on the report submitted under Section 1104.207 (Report of Investigation Required), to permit the person who is the subject of the complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation, determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent under Section 1104.2081 or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

SECTION 18. Amends Subchapter E, Chapter 1104, Occupations Code, by adding Sections 1104.2081 and 1104.2082, as follows:

Sec. 1104.2081. AGREED ORDER. (a) Authorizes TALCB to negotiate a settlement and enter into an agreed order with an appraisal management company or other person who is the subject of a complaint under this subchapter.

(b) Requires that an agreed order be approved by TALCB and signed by the commissioner of TALCB (commissioner) and the appraisal management company or other person who is the subject of the complaint.

(c) Provides that a TALCB member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) Provides that an appraisal management company or other person who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(e) Authorizes an appraisal management company or other person who enters into an agreed order under this section to be disciplined for failure to comply with the agreed order.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Provides that information or material, including any investigation file, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, or any other means of legal compulsion for release, including certain means, if the information or material is prepared or compiled by TALCB in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of TALCB.

(b) Authorizes the disclosure of information or material prepared or compiled by TALCB in connection with a complaint, investigation, or audit, notwithstanding Subsection (a):

(1) to the respondent;

(2) to a person providing a service to TALCB, including an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(3) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of TALCB;

(4) to a law enforcement agency;

(5) to the State Office of Administrative Hearings (SOAH); or

(6) to TALCB, or a panel of TALCB, for use during any proceeding conducted by SOAH or in a subsequent trial or appeal of a TALCB action or order.

(c) Provides that the release of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

(d) Authorizes TALCB to require that a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(e) Authorizes TALCB to withhold information or material described by Subsection (a) without requesting a decision from the Texas attorney general (attorney general) under Subchapter G (Attorney General Decisions), Chapter 552, Government Code.

(f) Provides that, notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by TALCB in connection with the complaint, investigation, or audit, including a completed audit report or a final order of TALCB, is subject to disclosure under Chapter 321 (State Auditor) or 552, Government Code.

SECTION 19. Amends the heading to Section 1104.210, Occupations Code, to read as follows:

Sec. 1104.210. PENALTY TO BE PAID.

SECTION 20. Amends Section 1104.212, Occupations Code, as follows:

Sec. 1104.212. NOTICE OF HEARING. Requires TALCB to, not later than the 30th day before the date of a contested case hearing, rather than not later than the 30th day before the hearing date of a contested case involving an appraisal management company, personally deliver or send by certified mail notice of the hearing to the parties of the hearing. Deletes existing text requiring TALCB to personally deliver or send by certified mail to the company notice of the hearing.

SECTION 21. Amends Subchapter E, Chapter 1104, Occupations Code, by adding Sections 1104.2121, 1104.2122, 1104.2131, and 1104.2132, as follows:

Sec. 1104.2121. ATTORNEY GENERAL REPRESENTATION. Prohibits the attorney general from representing TALCB in a contested case before SOAH.

Sec. 1104.2122. IMMUNITY OF WITNESSES. (a) Authorizes TALCB in a contested case hearing to grant a witness immunity from disciplinary action by TALCB.

(b) Requires that the official record of the hearing include the reason for granting immunity.

Sec. 1104.2131. RECORD OF PROCEEDINGS. (a) Requires that contested case proceedings be recorded by mechanical or electrical means, or a certified shorthand reporter.

(b) Requires that the proceedings or any part of the proceedings, at the request of a party, be transcribed. Requires that the expense of the transcription be charged to the requesting party.

(c) Requires that the recording, stenographic notes, or transcription of oral proceedings be maintained by TALCB until at least the fifth anniversary of the date of the decision in the contested case.

Sec. 1104.2132. FAILURE TO APPEAR; COSTS. (a) Authorizes the administrative law judge (ALJ) if a respondent receives proper notice of a contested case hearing but does not appear in person at the hearing, to conduct the hearing or enter an order, as the ALJ determines appropriate.

(b) Provides that the respondent is bound by the results of the hearing to the same extent as if the respondent had appeared.

(c) Authorizes the ALJ to award reasonable costs to TALCB on a request for and proof of costs incurred if the respondent fails to appear at the hearing. Defines "costs."

SECTION 22. Amends Section 1104.214, Occupations Code, as follows:

Sec. 1104.214. ACTION AFTER HEARING. Requires the ALJ, on conclusion of a contested case hearing under this subchapter (Disciplinary Actions and Procedures and Administrative Penalties), to issue to TALCB a proposal for decision that TALCB take, rather than is required to take, certain actions, including to require the payment of costs expended by TALCB associated with the contested case, including attorney's, rather than legal, fees, the costs charged by SOAH, and any administrative costs associated with the hearing, including witness expenses, travel expenses, and investigation expenses. Makes nonsubstantive changes.

SECTION 23. Amends Section 1104.215, Occupations Code, as follows:

Sec. 1104.215. DECISION BY BOARD. (a) Authorizes TALCB, based on the findings of fact, conclusions of law, and proposal for decision of the ALJ, rather than the recommendations of the hearings examiner, by order to determine that certain violations have or have not occurred.

(b) Requires TALCB to give notice of the order to the person who is the subject of the order. Requires that the notice include the findings of fact and conclusions of law separately stated, and any other information required by law. Deletes existing text requiring that the notice include separate statements of the findings of fact and conclusions of law. Makes nonsubstantive changes.

SECTION 24. Amends Section 1104.216, Occupations Code, as follows:

Sec. 1104.216. New heading: MOTION FOR REHEARING. (a) Authorizes a party to file a motion for rehearing with TALCB. Requires that the motion, rather than application, state the specific grounds for rehearing and the relief sought. Deletes existing text authorizing a party, not later than the 20th day after the date a final decision is issued in a contested case, to file an application with TALCB for a hearing.

(b) Provides that a motion for rehearing filed under this section is governed by Chapter 2001, Government Code. Deletes existing text providing that the application is denied if TALCB does not grant it before the 120th day after the date the commissioner is served with the application.

SECTION 25. Repealers: Sections 1104.102(b) (relating to prohibiting an entity more than 10 percent of which is owned by a certain person from owning more than 10 percent of an appraisal management company registered or applying for registration under this chapter unless the person has subsequently had a license or certificate to act as an appraiser granted or reinstated) and (d) (relating to requiring an appraisal management company applying for registration under this chapter to certify to TALCB that it meets certain criteria), Occupations Code.

SECTION 26. Requires TALCB, as soon as practicable after the effective date of this Act, to adopt rules and fees necessary to implement Chapter 1104, Occupations Code, as amended by this Act.

SECTION 27. Provides that the changes in law made by this Act relating to the eligibility for a registration under Chapter 1104, Occupations Code, or to the requirements for an application under that chapter apply only to an application submitted to TALCB on or after the effective date of this Act. Provides that an application submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 28. Provides that the changes in law made by this Act relating to the requirements for renewal of a registration under Chapter 1104, Occupations Code, apply only to an application for renewal of a registration that expires on or after the effective date of this Act. Provides that a registration that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 29. Provides that the changes in law made by this Act apply only to a disciplinary proceeding or a contested case hearing under Chapter 1104, Occupations Code, for conduct that occurs on or after the effective date of this Act. Provides that conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 30. Effective date: September 1, 2017.