

BILL ANALYSIS

Senate Research Center
85R20555 BEE-F

C.S.S.B. 2212
By: Hancock
Business & Commerce
4/13/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 2212 is to ensure consumer protection in the real estate industry. S.B. 2212 was developed in a coordinated effort between the Texas Real Estate Commission (TREC), the Texas association of realtors, and stakeholders across the state to ensure more transparency and disclosures in real estate transactions.

First, S.B. 2212 aims to prevent misleading real estate advertisements by (1) stating that an advertisement may be deemed "misleading" if a sales agent identifies himself or herself as the responsible party in a transaction when only operating on behalf of a broker, and (2) establishing that a sales agent must include the name of their broker on advertising materials. S.B. 2212 also removes existing requirements stating that a person must use specific identifiers (such as "broker" or "agent") in advertisements, as this requirement in itself did not accomplish the goal of consumer protection.

Second, S.B. 2212 addresses oversights to rules that govern individuals engaging in wholesaling transactions (i.e., someone who buys and sells option contracts on properties rather than having a full representation agreement). S.B. 2212 requires additional disclosures in wholesaling transactions and adds that if a wholesaler doesn't disclose their interest in a property, that person may be deemed to be engaging in real estate brokerage (for which they would need to obtain a license).

Third, S.B. 2212 addresses the funds TREC currently remits to the general revenue fund (\$750,000 a year). S.B. 2212 includes a provision to allow a reallocation of these funds, on an annual basis, to construct or maintain a building in the Capitol Complex (including the repayment of a construction loan). Any amount not used for these purposes would continue to be remitted to the general revenue fund. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 2212 amends current law relating to certain real estate brokerage and advertising activities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 1101, Occupations Code, by adding Section 1101.0045, as follows:

Sec. 1101.0045. **EQUITABLE INTERESTS IN REAL PROPERTY.** (a) Authorizes a person to acquire an option or an interest in a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the contract without holding a license issued under this chapter (Real Estate Brokers and Sales Agents) if the person does not use the option or contract to purchase to engage in real estate brokerage and discloses the nature of the equitable interest to any potential buyer.

(b) Provides that a person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest to a potential buyer is engaging in real estate brokerage.

SECTION 2. Amends Section 1101.156(b), Occupations Code, as follows:

(b) Prohibits the Texas Real Estate Commission (commission) from including in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that restricts the person's advertisement under an assumed or trade name that is authorized by a law of this state and registered with the commission, or requires the term "broker," "agent," or a similar designation or term, a reference to the commission, or the person's license number to be included in the person's advertisement.

SECTION 3. Amends Section 1101.652(b), Occupations Code, as follows:

(b) Authorizes the commission to suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage, publishes or causes to be published an advertisement, rather than an advertisement including an advertisement by newspaper, radio, television, the Internet, or display, that implies that a sales agent is responsible for the operation of the broker's real estate brokerage business or fails to include the name of the broker for whom the license holder acts, which name may be the licensed name, assumed name, or trade name of the broker as authorized by a law of this state and registered with the commission. Deletes existing text relating to failure to identify the person causing the advertisement to be published as a licensed broker or agent. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.086, as follows:

Sec. 5.086. **EQUITABLE INTEREST DISCLOSURE.** Requires a person selling an option or assigning an interest in a contract to purchase real property, before entering into a contract, to disclose to any potential buyer that the person is selling only an option or assigning an interest in a contract and that the person does not have legal title to the real property.

SECTION 5. Effective date: September 1, 2017.