

By: Geren

H.B. No. 3261

Substitute the following for H.B. No. 3261:

By: Kuempel

C.S.H.B. No. 3261

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the registration and regulation of appraisal management
3 companies; authorizing fees; expanding the applicability of an
4 occupational registration.

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

6 SECTION 1. Section 1104.003(b), Occupations Code, is
7 amended by adding Subdivision (6-a) to read as follows:

8 (6-a) "Federally regulated appraisal management
9 company" means an appraisal management company that is:

10 (A) owned and controlled by an insured depository
11 institution, as defined by 12 U.S.C. Section 1813; and

12 (B) regulated by:

13 (i) the Board of Governors of the Federal
14 Reserve System;

15 (ii) the Federal Deposit Insurance
16 Corporation;

17 (iii) the Office of the Comptroller of the
18 Currency; or

19 (iv) the successors to any of those
20 agencies.

21 SECTION 2. Section 1104.004(a), Occupations Code, is
22 amended to read as follows:

23 (a) This chapter does not apply to:

24 (1) a person who exclusively employs appraisers on an

1 employer and employee basis for the performance of appraisals;

2 (2) a person acting as an appraisal firm as defined by
3 board rule that at all times during a calendar year employs on an
4 exclusive basis as independent contractors not more than 15
5 appraisers for the performance of appraisals;

6 (3) a financial institution, including a department or
7 unit within the institution, that is regulated by an agency of this
8 state or the United States government;

9 (4) subject to Subsection (b), a person who enters
10 into an agreement with an appraiser for the performance of an
11 appraisal that on completion results in a report signed by both the
12 appraiser who completed the appraisal and the appraiser who
13 requested completion of the appraisal;

14 (5) an appraisal management company:

15 (A) operating only in this state with an
16 appraisal panel of not more than 15 appraisers at all times during a
17 calendar year; or

18 (B) operating in multiple states, including this
19 state, with an appraisal panel of not more than 24 appraisers in all
20 states at all times during a calendar year; [~~or~~]

21 (6) an appraisal management company that is a
22 subsidiary owned and controlled by a financial institution that is
23 subject to appraisal independence standards at least as stringent
24 as those under Section 1104.203 or the Truth in Lending Act (15
25 U.S.C. Section 1601 et seq.) through regulation by an agency of this
26 state or the United States government; or

27 (7) subject to Section 1104.052(c), a federally

1 regulated appraisal management company.

2 SECTION 3. Section 1104.052, Occupations Code, is amended
3 by amending Subsections (b) and (c) and adding Subsections (d) and
4 (e) to read as follows:

5 (b) The board shall collect from each appraisal management
6 company registered under this chapter the national registry fee
7 required by the appraisal subcommittee for each person who is on the
8 appraisal panel of the company and licensed or certified as an
9 appraiser in this state. [~~The board shall deposit the registry fees
10 to the credit of the appraiser registry account in the general
11 revenue fund.~~]

12 (c) Notwithstanding Section 1104.004, the board shall
13 collect from each federally regulated appraisal management company
14 operating in this state:

15 (1) the national registry fee required by the
16 appraisal subcommittee;

17 (2) information regarding the determination of the
18 national registry fee as required by the appraisal subcommittee;

19 (3) a fee in an amount that is sufficient for the
20 administration of this subsection as established by board rule; and

21 (4) any other information required by state or federal
22 law.

23 (d) The board shall deposit the national registry fees
24 collected under this section to the credit of the appraiser
25 registry account in the general revenue fund.

26 (e) The national registry fees collected under this section
27 [~~Subsection (b)~~] shall be sent to the appraisal subcommittee

1 regularly as required by federal law.

2 SECTION 4. Section 1104.102(a), Occupations Code, is
3 amended to read as follows:

4 (a) A person who has had a license or certificate to act as
5 an appraiser denied, revoked, or surrendered in lieu of revocation
6 in any state may not own in any manner ~~[more than one percent of]~~ an
7 appraisal management company registered or applying for
8 registration under this chapter unless:

9 (1) the person has subsequently had the ~~[a]~~ license or
10 certificate to act as an appraiser granted or reinstated; and

11 (2) the license or certificate to act as an appraiser
12 was denied, revoked, or surrendered for a nonsubstantive reason as
13 determined by the board.

14 SECTION 5. Sections 1104.103(b) and (c), Occupations Code,
15 are amended to read as follows:

16 (b) The application must contain:

17 (1) the name, business address, and telephone contact
18 information of the applicant ~~[entity]~~ seeking registration;

19 (2) if the applicant ~~[entity]~~ is not a corporation
20 domiciled in this state, the name and contact information for the
21 applicant's ~~[company's]~~ agent for service of process in this state;

22 (3) the name, address, and contact information for any
23 person ~~[individual or any corporation, partnership, or other~~
24 ~~business entity]~~ that owns more than 10 percent of the applicant
25 ~~[appraisal management company];~~

26 (4) the name, address, and contact information for at
27 least one controlling person;

1 (5) the designation of a primary contact under Section
2 [1104.104](#);

3 (6) the name and contact information of at least one
4 appraiser designated by the applicant [~~company~~] to respond to and
5 communicate with appraisers on the applicant's [~~company's~~]
6 appraisal panel regarding appraisal assignments;

7 (7) a certification that the applicant [~~entity~~] has a
8 system in place to ensure compliance with Subchapter D and Section
9 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

10 (8) a written irrevocable consent to service of
11 process; and

12 (9) any other information required by the board to
13 approve the application.

14 (c) The board shall adopt rules regarding registration and
15 the renewal of a registration under this chapter.

16 SECTION 6. Section [1104.104](#)(b), Occupations Code, is
17 amended to read as follows:

18 (b) The controlling person designated under Subsection (a):

19 (1) must:

20 (A) be certified as an appraiser in at least one
21 state at all times during the designation; or

22 (B) have completed:

23 (i) the 15-hour national Uniform Standards
24 of Professional Appraisal Practice course; and

25 (ii) the seven-hour national Uniform
26 Standards of Professional Appraisal Practice update course not more
27 than two years before the renewal of the appraisal management

1 company's registration;

2 (2) may not have had a license or certificate to act as
3 an appraiser denied, revoked, or surrendered in lieu of revocation
4 in any state unless:

5 (A) the person has subsequently had the [a]
6 license or certificate to act as an appraiser granted or
7 reinstated; and

8 (B) the license or certificate to act as an
9 appraiser was denied, revoked, or surrendered for a nonsubstantive
10 reason as determined by the board;

11 (3) must be of good moral character, as determined by
12 the board; and

13 (4) shall submit to a background investigation, as
14 determined by the board.

15 SECTION 7. Section 1104.105, Occupations Code, is amended
16 to read as follows:

17 Sec. 1104.105. DENIAL OF REGISTRATION OR RENEWAL. (a) The
18 board may deny an application for [a] registration or registration
19 renewal:

20 (1) if [~~to~~] an applicant [~~who~~] fails to satisfy a
21 requirement of this chapter; or

22 (2) on a determination by the board that:

23 (A) there is reasonable evidence that any person
24 who owns an interest in [~~more than 10 percent of~~] the appraisal
25 management company or any controlling person of the company has [~~7~~
26 ~~within the 24 months preceding the date of the application,~~] had a
27 license or certification as an appraiser or a registration as an

1 appraisal management company suspended, revoked, or put on
2 probation in any state;

3 (B) the applicant has, while registered under
4 this chapter, demonstrated incompetency, untrustworthiness, or
5 conduct or practices that render the registrant unfit to perform
6 appraisal management services; or

7 (C) the applicant no longer performs appraisal
8 management services in good faith and is a source of detriment,
9 injury, or loss to the public.

10 (b) The board shall immediately provide written notice to
11 the applicant of the board's denial of a registration or of a
12 registration renewal under this chapter.

13 (c) An appeal of the denial of a registration or of the
14 renewal of a registration is governed by Chapter 2001, Government
15 Code.

16 SECTION 8. Section 1104.151(b), Occupations Code, is
17 amended to read as follows:

18 (b) An appraisal management company is not in violation of
19 Subsection (a) if:

20 (1) the person whose license or certification was
21 denied, revoked, or surrendered in lieu of revocation has
22 subsequently [~~since that denial, revocation, or surrender~~] had the
23 [a] license or certificate granted or reinstated;

24 (2) the license or certification was denied, revoked,
25 or surrendered for a nonsubstantive reason as determined by the
26 board; and

27 (3) the person maintains the license or certificate in

1 good standing.

2 SECTION 9. Section 1104.153, Occupations Code, is amended
3 to read as follows:

4 Sec. 1104.153. APPRAISAL REVIEW. A person who performs an
5 appraisal review for an appraisal management company as required by
6 Section 1104.155 must be:

7 (1) licensed as an appraiser [~~or certified~~] under
8 Chapter 1103, unless exempt by board rule; and

9 (2) qualified to perform the appraisal [~~with at least~~
10 ~~the same certification for the property type as the appraiser who~~
11 ~~completed the report~~] being reviewed.

12 SECTION 10. Section 1104.156, Occupations Code, is amended
13 to read as follows:

14 Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal
15 management company required to register [~~registered~~] under this
16 chapter or that has applied for registration under this chapter
17 shall retain for at least five years all business records relating
18 to each service request that the company receives and the appraiser
19 who performs the appraisal for the company.

20 (b) The board may audit the records of an appraisal
21 management company required to register [~~registered~~] under this
22 chapter to ensure compliance with federal law, this chapter, board
23 rules, and the Uniform Standards of Professional Appraisal
24 Practice.

25 (c) A written record of all substantive communications
26 between an appraisal management company required to register
27 [~~registered~~] under this chapter and an appraiser relating to

1 inclusion on an appraisal panel or to an appraisal assignment must
2 be maintained as provided under Subsection (a).

3 SECTION 11. Section 1104.161(a), Occupations Code, is
4 amended to read as follows:

5 (a) An appraisal management [~~Other than during the first 30~~
6 ~~days after the date an appraiser is first added to the appraisal~~
7 ~~panel of an appraisal management company, a]~~ company may not remove
8 an appraiser from its panel, or otherwise refuse to assign requests
9 for appraisal services to an appraiser without:

10 (1) notifying the appraiser in writing of the reasons
11 for removal from the company's panel;

12 (2) if the appraiser is being removed from the panel
13 for illegal conduct, a violation of the Uniform Standards of
14 Professional Appraisal Practice, or a violation of this chapter,
15 notifying the appraiser of the nature of the alleged conduct or
16 violation; and

17 (3) providing an opportunity for the appraiser to
18 respond in writing to the notification.

19 SECTION 12. Section 1104.201, Occupations Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) The board may report to the appraisal subcommittee any
22 disciplinary action taken by the board against an appraisal
23 management company required to register under this chapter.

24 SECTION 13. Section 1104.202, Occupations Code, is amended
25 by adding Subsection (d) to read as follows:

26 (d) Notwithstanding any other law, an administrative
27 penalty collected under this section must be deposited in a

1 restricted fund maintained and operated by the board to develop
2 educational programs for appraisers or to conduct studies that
3 enhance consumer protection.

4 SECTION 14. Section 1104.203, Occupations Code, is amended
5 by adding Subsection (a-1) to read as follows:

6 (a-1) For purposes of Subsection (a), a fee paid by an
7 appraisal management company to an appraiser for appraisal services
8 is not a financial benefit.

9 SECTION 15. Section 1104.204(b), Occupations Code, is
10 amended to read as follows:

11 (b) The board, on its own motion, may file a complaint
12 against:

13 (1) an appraisal management company registered under
14 this chapter;

15 (2) a controlling person; or

16 (3) a person who engages in an activity for which
17 registration is required under this chapter without being
18 registered.

19 SECTION 16. Section 1104.205, Occupations Code, is amended
20 by adding Subsection (d) to read as follows:

21 (d) An investigation of an alleged violation by a person
22 registered under this chapter may not be terminated solely on the
23 basis that the person fails to renew the registration.

24 SECTION 17. Section 1104.208(a), Occupations Code, is
25 amended to read as follows:

26 (a) Based on the report submitted under Section 1104.207,
27 the board may:

1 (1) order further investigation of the complaint;

2 (2) permit the person who is the subject of the
3 complaint to participate in a voluntary discussion of the facts and
4 circumstances of the alleged violation;

5 (3) determine that there is not probable cause to
6 believe that a violation occurred and dismiss the case; or

7 (4) [~~3~~] determine that there is probable cause to
8 believe that a violation occurred and enter into an agreed order
9 with the respondent under Section 1104.2081 or proceed as the
10 complainant with a contested case hearing under Chapter 2001,
11 Government Code.

12 SECTION 18. Subchapter E, Chapter 1104, Occupations Code,
13 is amended by adding Sections 1104.2081 and 1104.2082 to read as
14 follows:

15 Sec. 1104.2081. AGREED ORDER. (a) The board may negotiate
16 a settlement and enter into an agreed order with an appraisal
17 management company or other person who is the subject of a complaint
18 under this subchapter.

19 (b) An agreed order must be:

20 (1) approved by the board; and

21 (2) signed by the commissioner and the appraisal
22 management company or other person who is the subject of the
23 complaint.

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

27 (d) An appraisal management company or other person who

1 consents to negotiate under this section waives the right to notice
2 and the opportunity to be heard under Chapter 2001, Government
3 Code, during the negotiation.

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

7 Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL.

8 (a) Information or material, including any investigation file, is
9 confidential and not subject to disclosure under Chapter 552,
10 Government Code, or any other means of legal compulsion for
11 release, including disclosure, discovery, or subpoena, if the
12 information or material is prepared or compiled by the board in
13 connection with a complaint, investigation, or audit of any person
14 subject to the jurisdiction of the board.

15 (b) Notwithstanding Subsection (a), information or material
16 prepared or compiled by the board in connection with a complaint,
17 investigation, or audit may be disclosed:

18 (1) to the respondent;

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

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

1 (4) to a law enforcement agency;

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

3 (6) to the board, or a panel of the board, for use
4 during any proceeding conducted by the State Office of
5 Administrative Hearings or in a subsequent trial or appeal of a
6 board action or order.

7 (c) The release of information under Subsection (b) is not a
8 voluntary disclosure for purposes of Section 552.007, Government
9 Code.

10 (d) The board may require that a confidentiality agreement
11 be signed by a person entitled to receive information under
12 Subsection (b) before releasing the information.

13 (e) The board may withhold information or material
14 described by Subsection (a) without requesting a decision from the
15 attorney general under Subchapter G, Chapter 552, Government Code.

16 (f) Notwithstanding Subsection (a), on the dismissal or
17 final resolution of a complaint, investigation, or audit,
18 information or material prepared or compiled by the board in
19 connection with the complaint, investigation, or audit, including a
20 completed audit report or a final order of the board, is subject to
21 disclosure under Chapter 321 or 552, Government Code.

22 SECTION 19. The heading to Section 1104.210, Occupations
23 Code, is amended to read as follows:

24 Sec. 1104.210. PENALTY TO BE PAID [~~OR HEARING REQUESTED~~].

25 SECTION 20. Section 1104.212, Occupations Code, is amended
26 to read as follows:

27 Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th

1 day before the [~~hearing~~] date of a contested case hearing
2 [~~involving an appraisal management company~~], the board shall
3 personally deliver or send by certified mail [~~to the company~~]
4 notice of the hearing to the parties to the hearing.

5 SECTION 21. Subchapter E, Chapter 1104, Occupations Code,
6 is amended by adding Sections 1104.2121, 1104.2122, 1104.2131, and
7 1104.2132 to read as follows:

8 Sec. 1104.2121. ATTORNEY GENERAL REPRESENTATION. The
9 attorney general may not represent the board in a contested case
10 before the State Office of Administrative Hearings.

11 Sec. 1104.2122. IMMUNITY OF WITNESSES. (a) The board in a
12 contested case hearing may grant a witness immunity from
13 disciplinary action by the board.

14 (b) The official record of the hearing must include the
15 reason for granting immunity.

16 Sec. 1104.2131. RECORD OF PROCEEDINGS. (a) Contested case
17 proceedings shall be recorded by:

18 (1) mechanical or electrical means; or

19 (2) a certified shorthand reporter.

20 (b) At the request of a party, the proceedings or any part of
21 the proceedings shall be transcribed. The expense of the
22 transcription shall be charged to the requesting party.

23 (c) The recording, stenographic notes, or transcription of
24 oral proceedings shall be maintained by the board until at least the
25 fifth anniversary of the date of the decision in the contested case.

26 Sec. 1104.2132. FAILURE TO APPEAR; COSTS. (a) If a
27 respondent receives proper notice of a contested case hearing but

1 does not appear in person at the hearing, the administrative law
2 judge may conduct the hearing or enter an order, as the
3 administrative law judge determines appropriate.

4 (b) The respondent is bound by the results of the hearing to
5 the same extent as if the respondent had appeared.

6 (c) The administrative law judge may award reasonable costs
7 to the board on a request for and proof of costs incurred if the
8 respondent fails to appear at the hearing. In this subsection, the
9 term "costs" means all costs associated with the hearing, including
10 the costs charged by the State Office of Administrative Hearings
11 and any costs related to hearing preparation, discovery,
12 depositions, subpoenas, service of process, witness expenses,
13 travel expenses, and investigation expenses.

14 SECTION 22. Section 1104.214, Occupations Code, is amended
15 to read as follows:

16 Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a
17 contested case hearing under this subchapter, the administrative
18 law judge shall:

19 (1) make findings of fact and conclusions of law; and
20 (2) issue to the board a proposal for decision that the
21 board ~~shall~~ take one or more of the following actions:

22 (A) dismiss the charges;
23 (B) revoke the appraisal management company's
24 registration;

25 (C) suspend the registration of the appraisal
26 management company for a period of not more than five years;

27 (D) impose a period of probation, with or without

1 conditions;

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

4 (F) impose an administrative penalty; or

5 (G) require the payment of costs expended by the
6 board associated with the contested case, including:

7 (i) attorney's [legal] fees;

8 (ii) the costs charged by the State Office
9 of Administrative Hearings; and

10 (iii) any administrative costs associated
11 with the hearing, including witness expenses, travel expenses, and
12 investigation expenses.

13 SECTION 23. Section 1104.215, Occupations Code, is amended
14 to read as follows:

15 Sec. 1104.215. DECISION BY BOARD. (a) Based on the
16 findings of fact, ~~[and]~~ conclusions of law, and proposal for
17 decision of the administrative law judge ~~[the recommendations of~~
18 ~~the hearings examiner]~~, the board by order may determine that:

19 (1) a violation has occurred and may impose an
20 administrative penalty or another sanction; or

21 (2) a violation did not occur.

22 (b) The board shall give notice of the order to the person
23 who is the subject of the order. The notice must include:

24 (1) ~~[separate statements of]~~ the findings of fact and
25 conclusions of law separately stated;

26 (2) the amount of any penalty imposed or a description
27 of any sanction imposed; ~~[and]~~

1 (3) a statement of the right of the person to judicial
2 review of the order; and

3 (4) any other information required by law.

4 SECTION 24. Section [1104.216](#), Occupations Code, is amended
5 to read as follows:

6 Sec. 1104.216. MOTION [~~APPLICATION~~] FOR REHEARING. (a) A
7 [~~Not later than the 20th day after the date a final decision is~~
8 ~~issued in a contested case, a~~] party may file a motion for rehearing
9 [~~an application~~] with the board [~~for a rehearing~~]. The motion
10 [~~application~~] must state:

11 (1) the specific grounds for rehearing; and

12 (2) the relief sought.

13 (b) A motion for rehearing filed under this section is
14 governed by Chapter [2001](#), Government Code [~~The application is~~
15 ~~denied if the board does not grant it before the 120th day after the~~
16 ~~date the commissioner is served with the application~~].

17 SECTION 25. Sections [1104.102](#)(b) and (d), Occupations Code,
18 are repealed.

19 SECTION 26. As soon as practicable after the effective date
20 of this Act, the Texas Appraiser Licensing and Certification Board
21 shall adopt rules and fees necessary to implement Chapter [1104](#),
22 Occupations Code, as amended by this Act.

23 SECTION 27. The changes in law made by this Act relating to
24 the eligibility for a registration under Chapter [1104](#), Occupations
25 Code, or to the requirements for an application under that chapter
26 apply only to an application submitted to the Texas Appraiser
27 Licensing and Certification Board on or after the effective date of

1 this Act. An application submitted before that date is governed by
2 the law in effect on the date the application was submitted, and the
3 former law is continued in effect for that purpose.

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

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

18 SECTION 30. This Act takes effect September 1, 2017.