

BILL ANALYSIS

C.S.H.B. 3878
By: King, Ken
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain circumstances have recently arisen that merit legislative reforms related to the Texas Real Estate Commission (TREC) and the Real Estate Research Center, including items that were brought to light following leadership turnover after TREC's 2019 Sunset Commission review, feedback from real estate licensees, and constituent input. The Texas Real Estate Research Center's composition and operation have not been updated since its legislative creation in 1971. Certain provisions in its related statute are now out of date and do not reflect modern practices or terminology. Similarly, certain TREC terms and provisions need updating to ensure they align with current practices. Among identified updates, the staff lead at TREC is commonly referred to as the "executive director" but is referred to as "commissioner" in the statutes, which creates confusion because TREC is led by commissioners. Additionally, licensee feedback over the past year has shown that there is confusion lingering for some sellers of real property option contracts and an improved disclosure process could benefit those parties. Finally, constituents have brought concerns that current TREC requirements regarding a specific type of required business license is duplicative and an impediment to business. C.S.H.B. 3878 seeks to address these issues and to update outdated language and practices.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTIONS 9, 10, and 13 of this bill.

ANALYSIS

C.S.H.B. 3878 amends the Education Code and Occupations Code to revise certain statutory provisions relating to the real estate research advisory committee, certain real estate licensing requirements, and the real estate recovery trust account. The bill also amends the Property Code with respect to certain required disclosures of equitable interests.

Texas Real Estate Research Center; Real Estate Research Advisory Committee

C.S.H.B. 3878 amends the Education Code to rename the Real Estate Research Center as the Texas Real Estate Research Center and make the following changes regarding the real estate research advisory committee:

- removes reference to the initial appointment or designation of members and the committee's first meeting;
- changes from the president of Texas A&M University to the executive director of the center the person required to submit a proposed budget each year;

- with respect to the current prohibition on any compensation for travel expenses other than transportation expenses, removes that prohibition and instead entitles advisory committee members to a per diem and compensation for transportation and travel expenses, including expenses for meals and lodging, and establishes that the per diem is provided in the center's budget instead of by legislative appropriation as provided in current law; and
- authorizes the committee to conduct a meeting and any discussions during the meeting, if the meeting is not permitted to be conducted as a closed meeting, by conference call or virtually through a third-party application as long as members of the general public are able to participate in the meeting.

Licenses for Real Estate Brokers and Sales Agents

C.S.H.B. 3878 amends the Occupations Code to exclude a business entity from the requirement to be licensed under The Real Estate License Act if the entity meets the following criteria:

- receives compensation on behalf of a licensed broker or sales agent that is earned by the license holder while engaged in real estate brokerage;
- performs no other acts of a broker;
- is a limited liability company or an S corporation;
- is registered with the Texas Real Estate Commission (TREC); and
- is at least 51 percent owned by the license holder on whose behalf the entity receives compensation.

The bill requires TREC to adopt rules providing for the registration of such a business entity.

C.S.H.B. 3878 repeals provisions specifying the amount of the fee collected by TREC from an applicant for an original license or certificate of registration upon application or renewal, as applicable, and providing for its deposit in the trust account and provides instead that the commission, by rule, may provide for the collection of fees for such deposit. The bill specifies that the statutorily established additional \$70 or \$20 fee, as applicable, is for each year of the term for which a broker license, sales agent license, or certificate of registration is issued or renewed, applicable only to the issuance or renewal of a license or certificate of registration on or after the bill's effective date.

C.S.H.B. 3878 repeals provisions establishing additional eligibility requirements for certain nonresident applicants for a broker or sales agent license and removes the requirement for an applicant for a broker license or sales agent license to provide evidence of experience in Texas as a license holder and completed hours of postsecondary education to be eligible for such a license. The bill requires a broker license applicant to provide evidence that the applicant has successfully completed the number of hours, prescribed by TREC rule, of qualifying real estate courses or related courses and caps that number of hours at 60 semester hours. The requirement applies only to an application for a license submitted on or after the bill's effective date. The bill repeals requirements for TREC and the Texas Appraiser Licensing and Certification Board (TALCB) to publish, make available, and update guidelines and examination or pre-examination study guides for applicable license examinations.

C.S.H.B. 3878 renames the commissioner of the TALCB as the executive director of TALCB and revises applicable statutory references to reflect that change. The bill clarifies that an appointee to TREC must take the constitutional oath of office not later than the 15th calendar day, rather than the 15th day, after the date of appointment.

Real Estate Recovery Trust Account

C.S.H.B. 3878 requires the rules adopted by TREC to charge and collect fees in amounts reasonable and necessary to administer The Real Estate License Act to also provide for reasonable and necessary costs of administering the real estate recovery trust account. Furthermore, the bill specifies that the rules must include a fee for the registration of a business

entity that is excluded from the license requirement under The Real Estate License Act. The bill raises from \$50,000 to \$125,000 the cap on payments from the real estate recovery trust account for claims arising out of a single transaction and raises from \$100,000 to \$250,000 the cap on payments from the trust account for claims based on judgments against a single license or certificate holder. The bill repeals the requirement for the TREC to transfer the excess amount of money in the real estate recovery trust account to the credit of the general revenue fund under specified circumstances.

Disclosure of Equitable Interest

C.S.H.B. 3878 amends the Property Code to revise the statutory provision relating to equitable interest disclosure which provides that, before entering into a contract, a person selling an option or assigning an interest in a contract to purchase real property must 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. The bill's revision requires such disclosure to be in writing to the owner of the real property that the person intends to sell an option or assign an interest in a contract.

Repealed Provisions

C.S.H.B. 3878 repeals the following provisions of the Occupations Code:

- Section 1101.357, setting out alternate experience requirements for certain applicants for a broker license;
- Section 1101.360(a), establishing a deadline for a resident of another state who was formerly licensed in Texas as a broker or sales agent to apply for such a license;
- Section 1101.361;
- Section 1101.406;
- Sections 1101.603(a) and (e);
- Section 1101.604(d); and
- Section 1103.259.

EFFECTIVE DATE

January 1, 2024.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3878 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute entitles advisory committee members to compensation for transportation and travel expenses, including expenses for meals and lodging. The introduced retained the current statutory prohibition on such compensation for travel expenses other than transportation expenses.

The substitute updates provisions shared with the introduced to clarify those provisions and to provide for their applicability to the application for, issuance of, and renewal of a license or applicable certificate of registration on or after the bill's effective date.