

BILL ANALYSIS

Senate Research Center

S.B. 1577
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Business & Commerce
5/10/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since its inception in 1971, many portions of the Texas Real Estate Research Center (center) have not been updated. Similarly, the Texas Real Estate Commission (TREC) needs to be modernized to ensure they align with current practices.

For example, there has been a growing issue in real estate in which someone might purchase an option or assignable contract on a property that is for sale. Many do not understand this fact, assuming they are participating in a traditional sale.

Lastly, there is a specific license required for entities to work with TREC, separate from the agent or broker license that owns the entity. Sometimes a licensee only uses business entities to receive commission payments, and some have expressed this requirement in these situations is overburdensome on licensees in these specific cases.

Solution:

C.S.S.B. 1577 resolves these issues by first, updating TREC and the center's outdated language and practices, as well as clarifying the center's source of funding. The bill modernizes terms and procedures to match modern language and operational standards; allows the center to hold virtual public meetings under specific circumstances; clarifies the timeline for advisory board appointees' assumption of office; and clarifies that the center receives funding from a fee paid by real estate licensees at the time of biannual license renewal, calculated on an annual basis.

The bill further updates statutes related to TREC's functions by raising the amount that can be paid to aggrieved consumers from the real estate recovery fund and ensures that fund is adequately financed; ensures that TREC cannot set exorbitant training requirements for broker licenses; and updates TREC staff title references.

Additionally, C.S.S.B. 1577 provides notification to sellers entering into wholesaling contracts and removes business entity licensing where a real estate licensee establishes an LLC only to receive compensation.

S.B. 1577 amends current law relating to the Texas Real Estate Research Center, the Real Estate Research Advisory Committee, the Texas Real Estate Commission, and the Texas Appraiser Licensing and Certification Board, increases a fee, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 9 (Section 1101.355, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Real Estate Commission is modified in SECTION 6 (Section 1101.152, Occupations Code), SECTION 10 (Section 1101.356, Occupations Code), and SECTION 13 (Section 1101.603, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter C, Chapter 86, Education Code, to read as follows:

SUBCHAPTER C. TEXAS REAL ESTATE RESEARCH CENTER

SECTION 2. Amends Section 86.51, Education Code, as follows:

Sec. 86.51. New heading: TEXAS REAL ESTATE RESEARCH CENTER. Provides that the Texas Real Estate Research Center (center) is established at Texas A&M University. Makes nonsubstantive changes.

SECTION 3. Amends Section 86.52, Education Code, by amending Subsections (c), (d), (e), (f), (h), (i), (j), (k), and (l) and adding Subsection (m), as follows:

(c) Provides that members of the Real Estate Research Advisory Committee (advisory committee) hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. Deletes existing text providing that initial appointees are exceptions to the six-year term of office for advisory committee members. Deletes existing text requiring the governor, in making the initial appointments, to designate three members, including two representatives of the real estate industry and one representative of the general public, for terms expiring in 1973, three for terms expiring in 1975, and three for terms expiring in 1977. Makes a nonsubstantive change.

(d) Requires the presiding officer of the Texas Real Estate Commission (TREC), rather than the chairman of TREC, or a member of TREC designated by the presiding officer, to serve as an ex officio, nonvoting member of the advisory committee. Makes a nonsubstantive change.

(e) Makes nonsubstantive changes to this subsection.

(f) Requires the advisory committee to meet not less than semiannually, and in addition on call of the advisory committee's presiding officer, on petition of any six of the advisory committee's members, or on call of the executive director of the center or the executive director's, rather than on call of the president of Texas A&M University or his, designated representative. Deletes existing text requiring that the first meeting of the advisory committee be called by the president of Texas A&M University or his designated representative. Makes conforming and nonsubstantive changes.

(h) Requires the executive director of the center or the executive director's designated representative, rather than the president of Texas A&M University or his designated representative, to submit to the advisory committee in advance of each fiscal year a budget for expenditures of all funds provided for the center in a form that is related to the proposed schedule of activities for the review and approved of the advisory committee. Makes nonsubstantive changes.

(i) Makes nonsubstantive changes to this subsection.

(j) Provides that each member of the advisory committee, rather than the board of directors of Texas A&M University (board), is entitled to a per diem as provided in the center's budget, rather than as set by legislative appropriation, for each day that the member engages in the business of the advisory committee. Provides that a member is entitled to compensation for transportation and travel expenses, including expenses for meals and lodging as provided in the center's budget. Deletes existing text prohibiting a board member from receiving any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. Deletes existing text entitling a member to compensation for transportation expenses as prescribed by the General Appropriations Act. Makes conforming changes.

(k) Provides that the advisory committee, except as provided by Subsection (l), is subject to Chapter 551 (Open Meetings), Government Code, Chapter 2001 (Administrative Procedure), Government Code, and the provisions of Chapter 572 (Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest), Government Code.

(l) Authorizes the advisory committee to conduct a meeting by conference call or virtually through a third-party Internet application as long as members of the general public are able to participate in the meeting, and any discussions during the meeting, if the meeting is not permitted to be conducted as a closed meeting under Chapter 551, Government Code.

(m) Creates this subsection from existing text.

SECTION 4. Amends Section 1101.0045, Occupations Code, 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 Chapter 1101 (Real Estate Brokers and Sales Agents) if the person:

(1) makes no changes to this subdivision; and

(2) discloses in writing the nature of the equitable interest to any seller or 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 as provided by Subsection (a)(2), rather than disclosing the nature of that interest to a potential buyer, is engaging in real estate brokerage.

SECTION 5. Amends Section 1101.054, Occupations Code, as follows:

Sec. 1101.054. **OFFICIAL OATH.** Requires each appointee, not later than the 15th calendar day, rather than the 15th day, after the date of appointment, to take the constitutional oath of office.

SECTION 6. Amends Section 1101.152(a), Occupations Code, as follows:

(a) Requires TREC to adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter and the real estate recovery trust account (trust account) as required by this chapter, including a fee for:

(1)-(12) makes no changes to these subdivisions;

(13)-(14) makes nonsubstantive changes to these subdivisions; and

(15) registering as a business entity under Section 1101.355(d).

SECTION 7. Amends Section 1101.154(a), Occupations Code, as follows:

(a) Provides that the fee for the issuance or renewal of a:

(1) broker license is the amount of the fee set under Section 1101.152 (Fees) and an additional \$70 fee for each year of the term for which the license is issued or renewed;

(2) sales agent license is the amount of the fee set under Section 1101.152 and an additional \$20 fee for each year of the term for which the license is issued or renewed; and

(3) certificate of registration is the amount of the fee set under Section 1101.152 and an additional \$20 fee for each year of the term for which the certificate is issued or renewed.

SECTION 8. Amends the heading to Section 1101.355, Occupations Code, to read as follows:

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES; REGISTRATION OF CERTAIN BUSINESS ENTITIES.

SECTION 9. Amends Section 1101.355, Occupations Code, by adding Subsections (d) and (e), as follows:

(d) Provides that, notwithstanding Subsection (c) (relating to requiring a business entity that receives compensation on behalf of a license holder to be licensed as a broker under this chapter) or any other law, a business entity is not required to be licensed under this chapter if the business entity:

(1) receives compensation on behalf of a broker or sales agent licensed under this chapter that is earned by the license holder while engaged in real estate brokerage;

(2) performs no other acts of a broker;

(3) is a limited liability company as defined by Section 101.001 (Definitions), Business Organizations Code, or an S corporation as defined by 26 U.S.C. Section 1361;

(4) is registered with TREC; and

(5) is at least 51 percent owned by the license holder on whose behalf the entity receives compensation.

(e) Requires TREC to adopt rules providing for the registration of a business entity described by Subsection (d).

SECTION 10. Amends Sections 1101.356(a) and (b-1), Occupations Code, as follows:

(a) Requires an applicant for a broker license to provide to TREC satisfactory evidence that the applicant:

(1) has had at least four years of active experience, rather than at least four years of active experience in this state, as a license holder during the 60 months preceding the date the application is filed; and

(2) has successfully completed the number of hours of qualifying real estate and related courses required by TREC rule, not to exceed 60 semester hours or equivalent classroom hours.

Deletes existing text requiring an applicant for a broker license to provide to the commission satisfactory evidence that the applicant has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including at least 18 semester hours or equivalent classroom hours of qualifying real estate courses, two semester hours of which are required to consist of a real estate brokerage course completed not more than two years before the application date, and at least 42 semester hours of qualifying real estate courses or related courses accepted by TREC.

(b-1) Deletes existing text requiring TREC by rule to establish what constitutes active experience for purposes of Section 1101.357 (Broker License: Alternate Experience Requirements for Certain Applicants).

SECTION 11. Amends Section 1101.358(a), Occupations Code, as follows:

(a) Requires an applicant for a sales agent license to provide to TREC satisfactory evidence that the applicant has completed at least 12 semester hours, or equivalent classroom hours, of education, rather than postsecondary education, consisting of certain qualifying coursework.

SECTION 12. Amends Section 1101.451(d), Occupations Code, as follows:

(d) Prohibits a renewal fee for a license under this chapter, except as provided by Subsection (e) (relating to authorizing a person whose license has been expired for 90 days or less to renew the license by paying TREC a fee equal to 1-1/2 times the required renewal fee, or twice the required renewal fee for a license expired for more than 90 days but less than six months), from exceeding, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152 and 1101.154 (Additional Fee: Texas Real Estate Research Center), rather than Sections 1101.152, 1101.154, and 1101.603 (Payments into Trust Account).

SECTION 13. Amends Section 1101.603(f), Occupations Code, as follows:

(f) Authorizes TREC by rule, to ensure the availability of a sufficient amount to pay anticipated claims on the trust account, to provide for the collection of fees or assessments from an applicant for an original license or certificate of registration or from a license or certificate holder at the next renewal to credit to the trust account. Deletes existing text authorizing TREC by rule, to ensure the availability of a sufficient amount to pay anticipated claims on the trust account, to provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

SECTION 14. Amends Sections 1101.610(a) and (b), Occupations Code, as follows:

(a) Prohibits payments from the trust account for claims, including attorney's fees, interest, and court costs, arising out of a single transaction from exceeding a total of \$125,000, rather than \$50,000, regardless of the number of claimants.

(b) Prohibits payments from the trust account for claims based on judgments against a single license or certificate holder from exceeding a total of \$250,000, rather than \$100,000, until the license or certificate holder has reimbursed the trust account for all amounts paid.

SECTION 15. Amends Section 1103.003(6), Occupations Code, to define "executive director," rather than "commissioner."

SECTION 16. Amends Section 1103.0545(d), Occupations Code, to make conforming changes.

SECTION 17. Amends Section 1103.057(c), Occupations Code, to make conforming changes.

SECTION 18. Amends Subchapter C, Chapter 1103, as follows:

**SUBCHAPTER C. New heading: EXECUTIVE DIRECTOR AND OTHER BOARD
PERSONNEL**

Sec. 1103.101. New heading: EXECUTIVE DIRECTOR. (a)-(b) Makes conforming changes to these subsections.

Sec. 1103.102. OTHER BOARD PERSONNEL. Makes a conforming change to this section.

Sec. 1103.103. SALARIES. Makes a conforming change to this section.

Sec. 1103.104. New heading: DUTIES OF EXECUTIVE DIRECTOR. Makes a conforming change to this section.

Sec. 1103.105. DIVISION OF RESPONSIBILITIES. Makes a conforming change to this section.

SECTION 19. Amends Section 1103.209(e), Occupations Code, to make conforming changes.

SECTION 20. Amends Sections 1103.452(b) and (c), Occupations Code, to make conforming changes.

SECTION 21. Amends Section 1103.458(c), Occupations Code, to make a conforming change.

SECTION 22. Amends Section 1103.459(c), Occupations Code, to make a conforming change.

SECTION 23. Amends Section 1103.5011, Occupations Code, as follows:

Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a)-(b) Makes conforming changes to these subsections.

SECTION 24. Amends Section 1103.5012, Occupations Code, as follows:

Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. Makes a conforming change to this section.

SECTION 25. Amends Section 1103.507(a), Occupations Code, to make a conforming change.

SECTION 26. Amends Section 1103.521(a), Occupations Code, to make a conforming change.

SECTION 27. Transfers Section 5.086, Property Code, to Subchapter A, Chapter 5, Property Code, redesignates it as Section 5.0205, Property Code, and amends it, as follows:

Sec. 5.0205. EQUITABLE INTEREST DISCLOSURE. Requires a person, before entering into a contract to sell an option or assign an interest in a contract to purchase real property, to disclose in writing to:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) the owner of the real property that the person intends to sell an option or assign an interest in a contract.

SECTION 28. Repealer: Section 1101.357 (Broker License: Alternate Experience Requirements for Certain Applicants), Occupations Code.

Repealer: Section 1101.360(a) (relating to authorizing a resident of another state who is not a licensed real estate broker and who was formerly licensed in this state as a broker or sales agent to apply for a license under this chapter not later than six months after expiration of the former license), Occupations Code.

Repealer: Section 1101.361 (Additional Eligibility Requirements for Certain Nonresident Applicants), Occupations Code.

Repealer: Section 1101.406 (Guidelines; Study Guides), Occupations Code.

Repealers: Sections 1101.603(a) (relating to requiring TREC to collect a fee, in addition to other fees, of \$10 to deposit to the credit of the trust account from an applicant for an

original license or certificate of registration) and (e) (relating to requiring each license or certificate holder, on determination by TREC that the balance in the trust fund is less than \$1 million, to pay an additional fee of \$10), Occupations Code.

Repealer: Section 1101.604(d) (relating to requiring TREC to transfer a certain excess amount of money in the trust account to the credit of the general revenue fund), Occupations Code.

Repealer: Section 1103.259 (Guidelines; Study Guides), Occupations Code.

SECTION 29. Makes application of Section 1101.154(a), Occupations Code, as amended by this Act, prospective.

SECTION 30. Makes application of Sections 1101.356(a) and 1101.358(a), Occupations Code, as amended by this Act, prospective.

SECTION 31. Makes application of Section 1101.451(d), Occupations Code, as amended by this Act, prospective.

SECTION 32. Effective date: January 1, 2024.