

BILL ANALYSIS

Senate Research Center
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S.B. 1577
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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 (commission) 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 the commission, 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.

As proposed, 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.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 7 (Section 1101.152, Occupations Code) and SECTION 9 (Section 1101.355, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Real Estate Commission is modified in SECTION 7 (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 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. Requires each member to serve until the member's successor is qualified. 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.

(f) Deletes existing text requiring the first meeting of the Real Estate Research Advisory Committee (advisory committee) to be called by the president of Texas A&M University or his designated representative. Requires the advisory committee to meet not less than semiannually, and in addition on call of the committee's presiding officer, or on petition of any six of the committee's members, or on call of the executive director of the center, rather than on call of 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 their designated representative to submit to the advisory committee in advance of each fiscal year a proposed 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. Requires that a copy of the final budget, rather than the proposed budget approved by the advisory committee, for informational purposes only, be forwarded with the comments of the committee to the board of directors of The Texas A&M University System prior to its action on the proposed budget, and prohibits the board of directors of The Texas A&M University System from authorizing any expenditure that has not had the prior approval of the advisory committee. Makes nonsubstantive changes.

(i) Makes a nonsubstantive change.

(j) Provides that each member of the advisory committee, rather than board, is entitled to a per diem as provided in the center's budget, rather than is entitled to a per diem as set by legislative appropriation, for each day that the member engages in the business of the committee, rather than board. Provides that a member is entitled to compensation for transportation expenses as provided in the center's budget, rather than as prescribed by the General Appropriations Act. Makes a conforming change.

(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. Transfers Section 5.086, Property Code, to Subchapter A, redesignates it as Section 5.____, and amends it, as follows:

Sec. 5.____. **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) any 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; and

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

Deletes existing text requiring 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. Makes nonsubstantive changes.

SECTION 5. 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 change to this subdivision;

(2) discloses the nature of the equitable interest, in writing, to any buyer or seller. Makes a conforming change.

(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 6. 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 7. Amends Section 1101.152, Occupations Code, by amending Subsection (a) and adding Subsection (c), 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, including a fee for:

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

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

(15) registration of a business entity.

(c) Requires TREC to adopt rules to set and collect fees in amounts reasonable and necessary to cover the costs of implementing the real estate recovery trust account as required under this chapter.

SECTION 8. 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 for each year of the term for which the license is renewed, an additional \$70 fee;

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

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

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

(d) Provides that a business entity, 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 Section 1101.356, Occupations Code, by amending Subsections (a) and (b-1), 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 as a license holder, rather than four years of active experience in this state, during the 60 months preceding the date the application is filed; and

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

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, Occupations Code, by amending Subsection (a), 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 qualifying coursework.

SECTION 12. Amends Section 1101.451(d), 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.

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

Sec. 1101.603. PAYMENTS INTO TRUST ACCOUNT. (a) Redesignates Subsection (c) as Subsection (a). Deletes existing text requiring TREC, in addition to other fees required by this chapter, to collect a fee of \$10 to deposit to the credit of the trust account from an applicant for an original license or certificate of registration.

(b) Redesignates Subsection (d) as Subsection (b). Deletes existing text providing that Subsection (b) is repealed by Acts 2015, 84th Legislature, Regular Session, Chapter 1158, Section 92, effective January 1, 2016.

(c) Redesignates text of existing Subsection (f) as Subsection (c). Authorizes TREC, to ensure the availability of a sufficient amount to pay anticipated claims on the trust account, by rule to provide for the collection of fees or assessments to deposit to the credit of the trust account from an applicant for an original license or certificate of registration or license or certificate holder at the next renewal, rather than at different times and under conditions other than those specified by this chapter. Deletes existing text requiring each license or certificate holder at the next renewal, on a determination by TREC at any time that the balance in the trust account is less than \$1 million, to pay an additional fee of \$10 in addition to the renewal fee. Deletes existing text requiring TREC to deposit the additional fee to the credit of the trust account.

SECTION 14. Amends Section 1101.610, Occupations Code, by amending Subsections (a) and (b), as follows:

Sec. 1101.610. PAYMENT LIMITS; ATTORNEY'S FEES. (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 Subdivision (6), Section 1103.003, Occupations Code, as follows:

(6) Provides that executive director, rather than "commissioner," means the executive director of the Texas Appraiser Licensing and Certification Board (TALCB). Makes a conforming change.

SECTIONS 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 the heading to Subchapter C, Chapter 1103, to read as follows:

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

SECTION 19. Amends Section 1103.101, Occupations Code, as follows:

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

SECTION 20. Amends Section 1103.102, Occupations Code, as follows:

Sec. 1103.102. OTHER BOARD PERSONNEL. Makes a conforming change.

SECTION 21. Amends Section 1103.103, Occupations Code, as follows:

Sec. 1103.103. SALARIES. Makes a conforming change.

SECTION 22. Amends Section 1103.104, Occupations Code, as follows:

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

SECTION 23. Amends Section 1103.105, Occupations Code, as follows:

Sec. 1103.105. DIVISION OF RESPONSIBILITIES. Makes a conforming change.

SECTION 24. Amends Section 1103.209(e), Occupations Code, to make conforming changes.

SECTION 25. Amends Sections 1103.452(b) and (c), Occupations Code, to make conforming changes.

SECTION 26. Amends Section 1103.458(c), Occupations Code, to make a conforming change.

SECTION 27. Amends Section 1103.459(c), Occupations Code, to make a conforming change.

SECTION 28. Amends Section 1103.5011, Occupations Code, as follows:

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

SECTION 29. Amends Section 1103.5012, Occupations Code, as follows:

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

SECTION 30. Amends Section 1103.507(a), Occupations Code, to make a conforming change.

SECTION 31. Amends Section 1103.521(a), Occupations Code, to make a conforming change.

SECTION 32. 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.

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

SECTION 34. Effective date: January 1, 2024.