

By: King of Hemphill

H.B. No. 3878

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the Texas Real Estate Research Center, the Real Estate
3 Research Advisory Committee, the Texas Real Estate Commission, and
4 the Texas Appraiser Licensing and Certification Board.

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

6 SECTION 1. The heading to Subchapter C, Chapter 86,
7 Education Code, is amended to read as follows:

8 SUBCHAPTER C. TEXAS REAL ESTATE RESEARCH CENTER

9 SECTION 2. Section 86.51, Education Code, is amended to
10 read as follows:

11 Sec. 86.51. TEXAS REAL ESTATE RESEARCH CENTER. The Texas
12 Real Estate Research Center [~~There~~] is established at Texas A&M
13 University [~~a Real Estate Research Center, hereinafter referred to~~
14 ~~as the center.~~] The operating budget, staffing, and activities of
15 the center shall be approved by the board of regents of The Texas
16 A&M University System.

17 SECTION 3. Section 86.52, Education Code, is amended by
18 amending Subsections (c), (d), (e), (f), (h), (i), (j), (k), and (l)
19 and adding Subsection (m) to read as follows:

20 (c) Members [~~Except for the initial appointees, members~~] of
21 the advisory committee hold office for staggered terms of six
22 years, with the terms of three members expiring on January 31 of
23 each odd-numbered year. [~~In making the initial appointments, the~~
24 ~~governor shall designate three members, including two~~

1 ~~representatives of the real estate industry and one representative~~
2 ~~of the general public, for terms expiring in 1973, three for terms~~
3 ~~expiring in 1975, and three for terms expiring in 1977.]~~ Any vacancy
4 shall be filled by appointment for the unexpired portion of the
5 term. Each member shall serve until the member's [~~his~~] successor is
6 qualified.

7 (d) The presiding officer [~~chairman~~] of the Texas Real
8 Estate Commission, or a member of the commission designated by the
9 presiding officer [~~him~~], shall serve as an ex officio, nonvoting
10 member of the advisory committee.

11 (e) The advisory committee shall elect a presiding officer
12 and an assistant presiding officer from the committee's [~~its~~]
13 membership, and each officer shall serve for a term of one year.

14 (f) [~~The first meeting of the advisory committee shall be~~
15 ~~called by the president of Texas A & M University or his designated~~
16 ~~representative.]~~ The advisory committee shall meet not less than
17 semiannually, and in addition on call of the committee's presiding
18 officer [~~its chairman~~], or on petition of any six of the committee's
19 [~~its~~] members, or on call of the executive director of the center
20 [~~president of Texas A & M University~~] or their [~~his~~] designated
21 representative.

22 (h) The executive director of the center [~~president of Texas~~
23 ~~A & M University~~] or their [~~his~~] designated representative shall
24 submit to the advisory committee in advance of each fiscal year a
25 proposed budget for expenditures of all funds provided for the
26 center in a form that is related to the proposed schedule of
27 activities for the review and approval of the advisory committee.

1 For informational purposes only, a copy of the final ~~[The proposed]~~
2 budget approved by the advisory committee shall be forwarded with
3 the comments of the committee to the board of directors of The Texas
4 A&M ~~[A & M]~~ University System prior to its action on the proposed
5 budget, and the board of directors of The Texas A & M University
6 System shall not authorize any expenditure that has not had the
7 prior approval of the advisory committee.

8 (i) The president of Texas A & M University or their ~~[his]~~
9 designated representative shall submit to the advisory committee
10 for its review and approval a research agenda at the beginning of
11 each fiscal year and shall continuously inform the advisory
12 committee of changes in its substance and scheduling.

13 (j) Each member of the advisory committee ~~[board]~~ is
14 entitled to a per diem as provided in the center's budget ~~[set by~~
15 ~~legislative appropriation]~~ for each day that the member engages in
16 the business of the committee ~~[board]~~. A member may not receive any
17 compensation for travel expenses, including expenses for meals and
18 lodging, other than transportation expenses. A member is entitled
19 to compensation for transportation expenses as provided in
20 ~~[prescribed by]~~ the center's budget ~~[General Appropriations Act]~~.

21 (k) Except as provided by Subsection (l), the ~~[The]~~ advisory
22 committee is subject to Chapter 551, Government Code, Chapter 2001,
23 Government Code, and the provisions of Chapter 572, Government
24 Code.

25 (l) The advisory committee may conduct a meeting by
26 conference call or virtually through a third-party Internet
27 application as long as members of the general public are able to

1 participate in the meeting, and any discussions during the meeting,
2 if the meeting is not permitted to be conducted as a closed meeting
3 under Chapter 551, Government Code.

4 (m) The financial transactions of the center are subject to
5 audit by the state auditor in accordance with Chapter 321,
6 Government Code.

7 SECTION 4. Section 5.086, Property Code, is moved to
8 Subchapter A and renumbered as Section 5.____ and amended to read as
9 follows:

10 Sec. 5.____. EQUITABLE INTEREST DISCLOSURE. Before
11 entering into a contract to sell an option or assign an interest in
12 a contract to purchase real property, a person [~~selling an option or~~
13 ~~assigning an interest in a contract to purchase real property~~] must
14 disclose, in writing, to:

15 (1) any [~~potential~~] buyer that the person is selling
16 only an option or assigning an interest in a contract and that the
17 person does not have legal title to the real property; and

18 (2) the seller of the real property that the person [~~is~~
19 ~~selling only~~] intends to sell an option or [~~assigning~~] assign an
20 interest in a contract [~~and that the person does not have legal~~
21 ~~title to the real property~~].

22 SECTION 5. Section 1101.0045, Occupations Code, is amended
23 to read as follows:

24 Sec. 1101.0045. EQUITABLE INTERESTS IN REAL PROPERTY. (a)
25 A person may acquire an option or an interest in a contract to
26 purchase real property and then sell or offer to sell the option or
27 assign or offer to assign the contract without holding a license

1 issued under this chapter if the person:

2 (1) does not use the option or contract to purchase to
3 engage in real estate brokerage; and

4 (2) discloses the nature of the equitable interest, in
5 writing, to any [~~potential~~] buyer or seller.

6 (b) A person selling or offering to sell an option or
7 assigning or offering to assign an interest in a contract to
8 purchase real property without disclosing the nature of that
9 interest as provided by Subsection (a)(2) [~~to a potential buyer~~] is
10 engaging in real estate brokerage.

11 SECTION 6. Section [1101.054](#), Occupations Code, is amended
12 to read as follows:

13 Sec. 1101.054. OFFICIAL OATH. Not later than the 15th
14 calendar day after the date of appointment, each appointee must
15 take the constitutional oath of office.

16 SECTION 7. Section [1101.152](#), Occupations Code, is amended
17 by amending subsection (a) and adding new subsection (c) to read as
18 follows:

19 (a) The commission shall adopt rules to charge and collect
20 fees in amounts reasonable and necessary to cover the costs of
21 administering this chapter, including a fee for:

22 (1) filing an original application for a broker
23 license;

24 (2) renewal of a broker license;

25 (3) filing an original application for a sales agent
26 license;

27 (4) renewal of a sales agent license;

- 1 (5) registration as an easement or right-of-way agent;
- 2 (6) filing an application for a license examination;
- 3 (7) filing a request for a change of place of business,
- 4 change of name, return to active status, or change of sponsoring
- 5 broker;
- 6 (8) filing a request to replace a lost or destroyed
- 7 license or certificate of registration;
- 8 (9) filing an application for approval of an education
- 9 program under Subchapter G;
- 10 (10) annual operation of an education program under
- 11 Subchapter G;
- 12 (11) transcript evaluation;
- 13 (12) preparing a license or registration history;
- 14 (13) filing a request for a determination of fitness
- 15 to engage in a profession the commission regulates; ~~and~~
- 16 (14) conducting a criminal history check for issuing
- 17 or renewing a license; and
- 18 (15) registration of a business entity.

19 (c) The commission shall adopt rules to set and collect fees
20 in amounts reasonable and necessary to cover the costs of
21 implementing the real estate recovery trust account as required
22 under this chapter.

23 SECTION 8. Section 1101.154(a), Occupations Code, is
24 amended to read as follows:

- 25 (a) The fee for the issuance or renewal of a:
 - 26 (1) broker license is the amount of the fee set under
 - 27 Section 1101.152 and for each year of the term for which the license

1 is renewed, an additional \$70 fee;

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

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

8 SECTION 9. Section 1101.355, Occupations Code, is amended
9 by adding Subsections (d) and (e) to read as follows:

10 (d) Notwithstanding Subsection (c) or any other law, a
11 business entity is not required to be licensed under this chapter if
12 the business entity:

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

16 (2) performs no other acts of a broker;

17 (3) is:

18 (A) a limited liability company as defined by
19 Section 101.001, Business Organizations Code; or

20 (B) an S corporation as defined by 26 U.S.C.
21 Section 1361;

22 (4) is registered with the commission; and

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

25 (e) The commission shall adopt rules providing for the
26 registration of a business entity described by Subsection (d).

27 SECTION 10. Section 1101.356, Occupations Code, is amended

1 by amending Subsections (a) and (b-1) to read as follows:

2 (a) An applicant for a broker license must provide to the
3 commission satisfactory evidence that the applicant:

4 (1) has had at least four years of active experience
5 ~~[in this state]~~ as a license holder during the 60 months preceding
6 the date the application is filed; and

7 (2) has successfully completed the number of hours
8 prescribed by commission rule, not to exceed ~~[at least]~~ 60 semester
9 hours, or equivalent classroom hours, of qualifying real estate
10 courses or related courses ~~[postsecondary education, including:~~

11 ~~(A) at least 18 semester hours or equivalent~~
12 ~~classroom hours of qualifying real estate courses, two semester~~
13 ~~hours of which must consist of a real estate brokerage course~~
14 ~~completed not more than two years before the application date; and~~

15 ~~(B) at least 42 semester hours of qualifying real~~
16 ~~estate courses or related courses accepted by the commission].~~

17 (b-1) The commission by rule shall establish what
18 constitutes active experience for purposes of this section ~~[and~~
19 ~~Section 1101.357]~~.

20 SECTION 11. Section 1101.358, Occupations Code, is amended
21 by amending Subsection (a) to read as follows:

22 (a) An applicant for a sales agent license must provide to
23 the commission satisfactory evidence that the applicant has
24 completed at least 12 semester hours, or equivalent classroom
25 hours, of ~~[postsecondary]~~ education consisting of:

26 (1) at least four semester hours of qualifying real
27 estate courses on principles of real estate; and

1 (2) at least two semester hours of each of the
2 following qualifying real estate courses:

- 3 (A) agency law;
- 4 (B) contract law;
- 5 (C) contract forms and addendums; and
- 6 (D) real estate finance.

7 SECTION 12. Section 1101.451(d) is amended to read as
8 follows:

9 (d) Except as provided by Subsection (e), a renewal fee for
10 a license under this chapter may not exceed, calculated on an annual
11 basis, the amount of the sum of the fees established under Sections
12 1101.152 and ~~1101.154~~ ~~and 1101.603~~.

13 SECTION 13. Section 1101.603, Occupations Code, is amended
14 to read as follows:

15 Sec. 1101.603. PAYMENTS INTO TRUST ACCOUNT. (a) ~~[In~~
16 ~~addition to other fees required by this chapter, the commission~~
17 ~~shall collect a fee of \$10 to deposit to the credit of the trust~~
18 ~~account from an applicant for an original license or certificate of~~
19 ~~registration.~~

20 ~~(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158, Sec.~~
21 ~~92, eff. January 1, 2016.~~

22 ~~(c)]~~ Notwithstanding any other law, the commission shall
23 deposit to the credit of the trust account or the real estate
24 inspection recovery fund, as determined by the commission, an
25 administrative penalty collected under Subchapter O for a violation
26 by a person licensed under this chapter or Chapter 1102.

27 (b) ~~[(d)]~~ Notwithstanding any other law, an administrative

1 penalty collected under Subchapter O for a violation by a person who
2 is not licensed under this chapter or Chapter 1102 shall be
3 deposited to the credit of the trust account or the real estate
4 inspection recovery fund, as determined by the commission.

5 (c) [~~(e)~~ On a determination by the commission at any time
6 that the balance in the trust account is less than \$1 million, each
7 license or certificate holder at the next renewal must pay, in
8 addition to the renewal fee, an additional fee of \$10. The
9 commission shall deposit the additional fee to the credit of the
10 trust account.

11 ~~(f)~~] To ensure the availability of a sufficient amount to
12 pay anticipated claims on the trust account, the commission by rule
13 may provide for the collection of fees or assessments to deposit to
14 the credit of the trust account from an applicant for an original
15 license or certificate of registration or license or certificate
16 holder at the next renewal [~~at different times and under conditions~~
17 ~~other than those specified by this chapter~~].

18 SECTION 14. Section 1101.610, Occupations Code, is amended
19 by amending Subsections (a) and (b) to read as follows:

20 Sec. 1101.610. PAYMENT LIMITS; ATTORNEY'S FEES. (a)
21 Payments from the trust account for claims, including attorney's
22 fees, interest, and court costs, arising out of a single
23 transaction may not exceed a total of \$125,000 [~~\$50,000~~],
24 regardless of the number of claimants.

25 (b) Payments from the trust account for claims based on
26 judgments against a single license or certificate holder may not
27 exceed a total of \$250,000 [~~\$100,000~~] until the license or

1 certificate holder has reimbursed the trust account for all amounts
2 paid.

3 SECTION 15. Subdivision (6), Section 1103.003, Occupations
4 Code, is amended to read as follows:

5 (6) Executive Director [~~Commissioner~~] means the
6 executive director [~~commissioner~~] of the Texas Appraiser Licensing
7 and Certification Board.

8 SECTION 16. Subsection (d), Section 1103.0545, Occupations
9 Code, is amended to read as follows:

10 (d) The executive director [~~commissioner~~] shall create a
11 training manual that includes the information required by
12 Subsection (b). The executive director [~~commissioner~~] shall
13 distribute a copy of the training manual annually to each member of
14 the board. Each member of the board shall sign and submit to the
15 executive director [~~commissioner~~] a statement acknowledging that
16 the member received and has reviewed the training manual.

17 SECTION 17. Subsection (c), Section 1103.057, Occupations
18 Code, is amended to read as follows:

19 (b) If the executive director [~~commissioner~~] has knowledge
20 that a potential ground for removal of an appointed board member
21 exists, the executive director [~~commissioner~~] shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall immediately notify the governor and the
24 attorney general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director [~~commissioner~~] shall notify the next highest
27 ranking officer of the board, who shall immediately notify the

1 governor and the attorney general that a potential ground for
2 removal exists.

3 SECTION 18. The heading to Subchapter C, Chapter 1103,
4 Occupations Code, is amended to read as follows:

5 SUBCHAPTER C. EXECUTIVE DIRECTOR [~~COMMISSIONER~~] AND OTHER BOARD
6 PERSONNEL

7 SECTION 19. Section 1103.101, Occupations Code, is amended
8 to read as follows:

9 Sec. 1103.101. EXECUTIVE DIRECTOR [~~COMMISSIONER~~]. (a) The
10 executive director [~~administrator~~] of the Texas Real Estate
11 Commission shall serve as executive director [~~commissioner~~].

12 (b) The board may delegate to the executive director
13 [~~commissioner~~] the responsibility for administering this chapter
14 and Chapter 1104, including the approval of consent orders and
15 agreements.

16 SECTION 20. Section 1103.102, Occupations Code, is amended
17 to read as follows:

18 Sec. 1103.102. OTHER BOARD PERSONNEL. In addition to the
19 executive director [~~commissioner~~], the board may employ other
20 officers and employees as necessary to administer this chapter and
21 Chapter 1104.

22 SECTION 21. Section 1103.103, Occupations Code, is amended
23 to read as follows:

24 Sec. 1103.103. SALARIES. The executive director
25 [~~commissioner~~] shall determine the salaries of the officers and
26 employees of the board.

27 SECTION 22. Section 1103.104, Occupations Code, is amended

1 to read as follows:

2 Sec. 1103.104. DUTIES OF EXECUTIVE DIRECTOR
3 [~~COMMISSIONER~~]. The executive director [~~commissioner~~] shall:

- 4 (1) disseminate information;
- 5 (2) administer rules adopted by the board under this
6 chapter or Chapter [1104](#);
- 7 (3) review each application for a certificate or
8 license and make a recommendation for final action to the board;
- 9 (4) review and make recommendations to the board
10 regarding the adoption of rules relating to:
 - 11 (A) the examination required by Subchapter F;
 - 12 (B) education and experience requirements for
13 issuance of certificates and licenses;
 - 14 (C) continuing education for a certified or
15 licensed appraiser;
 - 16 (D) standards of professional practice and
17 ethics for a certified or licensed appraiser;
 - 18 (E) standards for a real estate appraisal
19 performed by a certified or licensed appraiser; and
 - 20 (F) the fees established by the board under
21 Section [1103.156](#) or Section [1104.052](#);
- 22 (5) collect fees established by the board;
- 23 (6) manage the staff and employees of the board; and
- 24 (7) perform any other duty prescribed by the board
25 under this chapter or Chapter [1104](#).

26 SECTION 23. Section [1103.105](#), Occupations Code, is amended
27 to read as follows:

1 Sec. 1103.105. DIVISION OF RESPONSIBILITIES. The board
2 shall develop and implement policies that clearly separate the
3 policymaking responsibilities of the board and the management
4 responsibilities of the executive director [~~commissioner~~] and the
5 staff of the board.

6 SECTION 24. Subsection (e), Section 1103.209, Occupations
7 Code, is amended to read as follows:

8 (e) An applicant for a certificate or license under this
9 chapter who is not a resident of this state must submit with the
10 application an irrevocable consent that states that service of
11 process in an action against the applicant arising out of the
12 applicant's activities as a certified or licensed appraiser in this
13 state may be made by delivery of the process to the executive
14 director [~~commissioner~~] if the plaintiff in the action, using due
15 diligence, cannot obtain personal service on the applicant. If
16 process is served as provided by this subsection, the executive
17 director [~~commissioner~~] shall immediately send a copy of the
18 material served on the executive director [~~commissioner~~] to the
19 certified or licensed appraiser at the appraiser's address of
20 record.

21 SECTION 25. Subsections (b) and (c), Section 1103.452,
22 Occupations Code, are amended to read as follows:

23 (b) An investigator designated by the executive director
24 [~~commissioner~~] shall investigate each allegation or formal
25 complaint.

26 (c) If the board determines at any time that an allegation
27 or formal complaint is inappropriate or without merit, the board or

1 the executive director [~~commissioner~~] shall dismiss the complaint
2 and may not take further action.

3 SECTION 26. Subsection (c), Section 1103.458, Occupations
4 Code, is amended to read as follows:

5 (c) A consent order must be:

6 (1) approved by the board; and

7 (2) signed by the executive director [~~commissioner~~]

8 and the appraiser or appraiser trainee who is the subject of the
9 complaint.

10 SECTION 27. Subsection (c), Section 1103.459, Occupations
11 Code, is amended to read as follows:

12 (c) A consent agreement must be:

13 (1) approved by the board; and

14 (2) signed by the executive director [~~commissioner~~]

15 and the appraiser or appraiser trainee who is the subject of the
16 complaint.

17 SECTION 28. Section 1103.5011, Occupations Code, is amended
18 to read as follows:

19 Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) The
20 executive director [~~commissioner~~] may send an appraiser against
21 whom a complaint has been filed a notice of violation including:

22 (1) a summary of the alleged violation;

23 (2) the recommended sanction, including the amount of
24 any administrative penalty sought; and

25 (3) a conspicuous notice that the respondent has the
26 right to a hearing to contest the alleged violation, the
27 recommended sanction, or both.

1 (b) Not later than the 20th day after the date the person
2 receives the notice under Subsection (a), the person may:

3 (1) accept the executive director's [~~commissioner's~~]
4 determination, including the recommended sanction; or

5 (2) request in writing a hearing, to be held under
6 Chapter 2001, Government Code, on the occurrence of the violation,
7 the sanction, or both.

8 SECTION 29. Section 1103.5012, Occupations Code, is amended
9 to read as follows:

10 Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. If
11 the person accepts the executive director's [~~commissioner's~~]
12 determination, or fails to respond in a timely manner to the notice,
13 the board by order shall approve the determination and order
14 payment of the recommended penalty, impose the recommended
15 sanction, or both.

16 SECTION 30. Subsection (a), Section 1103.507, Occupations
17 Code, is amended to read as follows:

18 (a) The executive director [~~commissioner~~] shall issue a
19 subpoena to compel the attendance of a witness or the production of
20 records or other evidence if:

21 (1) a party to the proceeding requests the subpoena
22 orally or in writing;

23 (2) the request specifies each item of evidence sought
24 and the full name and address of each witness sought; and

25 (3) the party shows reasonable cause.

26 SECTION 31. Subsection (a), Section 1103.521, Occupations
27 Code, is amended to read as follows:

1 (a) The administrative law judge shall file the judge's
2 final decision in a contested case hearing with the executive
3 director [~~commissioner~~].

4 SECTION 32. The following provisions are repealed:

- 5 (1) Section 1101.357, Occupations Code;
6 (2) Section 1101.360(a), Occupations Code;
7 (3) Section 1101.361, Occupations Code;
8 (4) Section 1101.406, Occupations Code;
9 (5) Section 1101.604(d), Occupations Code; and
10 (6) Section 1103.259, Occupations Code.

11 SECTION 33. Section 1101.154(a), Occupations Code, as
12 amended by this Act, applies only to the issuance or renewal of a
13 license or certificate of registration under Chapter 1101,
14 Occupations Code, on or after the effective date of this Act.

15 SECTION 34. This Act takes effect January 1, 2024.