

BILL ANALYSIS

Senate Research Center

S.B. 1968
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2023, a class action lawsuit brought against the National Association of Realtors and several large real estate brokerages highlighted an opportunity for increased transparency between real estate brokers and prospective buyers. S.B. 1968 seeks to elucidate the real estate transaction process through three main provisions.

First, S.B. 1968 repeals imbalances created through subagency. Currently, subagency is the default relationship between an agent, with the fiduciary responsibility only shifting once a buyer's representation agreement is created, either orally or verbally, between a broker and prospective buyer.

Second, S.B. 1968 clarifies the relationship between a broker and buyer in the period prior to a buyer-representation agreement being created. The bill permits a broker to show real property without representing the party if certain conditions are met and reaffirms current requirements that the broker disclose if they represent the seller and provide the required disclosure form from the Texas Real Estate Commission (TREC).

Third, S.B. 1968 requires a license holder who performs any act of real estate brokerage to enter into a written agreement with the buyer prior to showing any residential property or, if no property will be shown to the buyer, prior to making an offer to purchase property on behalf of the buyer. The written agreement mandated by this bill is not a buyer-representation agreement, but can be if the broker and the client so chooses. Its purpose is to provide transparency to the buyer regarding their relationship with the agent and of the costs they expect to incur during the course of the transaction.

Additionally, S.B. 1968 includes minor amendments to the Occupations Code related to the operations of TREC.

(Original Author/Sponsor's Statement of Intent)

S.B. 1968 amends current law relating to the licensing and regulation of certain real estate professionals by the Texas Real Estate Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 3 (Section 1101.204, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Real Estate Commission is modified in SECTION 4 (Section 1101.301, Occupations Code) and SECTION 7 (Section 1101.458, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1101.003(a), Occupations Code, to redefine "qualifying real estate courses."

SECTION 2. Amends Section 1101.161, Occupations Code, as follows:

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. Deletes existing text authorizing the Texas Real Estate Commission (TREC) to solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under Chapter 1303 (Residential Service Companies) of the Occupations Code. Makes a nonsubstantive change.

SECTION 3. Amends Section 1101.204, Occupations Code, by adding Subsection (d-1), as follows:

(d-1) Authorizes TREC, notwithstanding Section 1101.2051 (Confidentiality of Investigation Material), to provide the notice required by Subsection (d) (relating to requiring TREC to provide a notice of investigation against a license holder) to a person licensed under Chapter 1101 (Real Estate Brokers and Sales Agents) or Chapter 1102 (Real Estate Inspectors) and who is associated with the license holder who is the subject of the investigation. Requires TREC to adopt rules to specify the persons who are authorized to receive notice under this subsection.

SECTION 4. Amends Section 1101.301(a), Occupations Code, as follows:

(a) Authorizes TREC, as necessary for the administration of this chapter and Chapter 1102, by rule to establish certain standards and requirements, including standards for the approval of qualifying educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by public high schools and accredited colleges and universities.

SECTION 5. Amends Section 1101.356(a), Occupations Code, to require an applicant for a broker license to provide to TREC satisfactory evidence that the applicant satisfies certain criteria, including having attended the broker responsibility course approved by TREC under Section 1101.458 (Additional Education Requirements for Certain License Holders), which is authorized to be used to satisfy the related course hours described by Subdivision (2) (relating to requiring an applicant for a broker license to provide to TREQ evidence of completing a certain course hours requirement), and to make nonsubstantive changes.

SECTION 6. 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 successfully completed at least 12 semester hours, or equivalent classroom hours, of qualifying real estate courses required by TREC rule, rather than education consisting of certain material.

SECTION 7. Amends Sections 1101.458(a), (b), and (c), Occupations Code, as follows:

(a) Requires that a broker responsibility course approved by TREC, during the term of a current license, be attended by a broker licensed under this chapter and a sales agent licensed under this chapter who supervises another license holder. Deletes existing text requiring a designated broker for a business entity licensed under this chapter, a broker who sponsors a sales agent, or a license holder who supervises another license holder to attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by TREC.

(b) Prohibits the course from exceeding six classroom hours. Makes conforming changes.

(c) Authorizes broker responsibility course hours to be used to satisfy the hours described by Section 1101.455(f) (relating to authorizing certain continuing education course hours to be devoted to other real estate-related topics and courses approved by TREC). Makes a conforming change.

SECTION 8. Amends Section 1101.552, Occupations Code, by amending Subsection (e) and adding Subsections (f) and (g), as follows:

(e) Requires a license holder to provide TREC with the license holder's current mailing address, business address, business telephone number, and business e-mail address and, if the license holder is an associated broker, the name of the broker with whom the license holder is associated. Deletes existing text requiring a license holder to provide TREC with the license holder's business e-mail address if available. Makes nonsubstantive changes.

(f) Creates this subsection from existing text. Requires a license holder to notify TREC of a change in the information described by Subsection (e), rather than a change in the license holder's mailing or e-mail address or telephone number.

(g) Defines "associated broker."

SECTION 9. Amends Section 1101.558(b-1), Occupations Code, to require a license holder, at the time of the license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, to provide to the party written notice in at least a 10-point font that includes certain information, including a description of the basic obligations a broker has to a party to a real estate transaction that the broker does not represent, and to make nonsubstantive changes.

SECTION 10. Amends Subchapter L, Chapter 1101, Occupations Code, by adding Sections 1101.562 and 1101.563, as follows:

Sec. 1101.562. REAL PROPERTY SHOWINGS WITHOUT REPRESENTATION. (a) Authorizes a broker to show real property available for sale or lease to a party without representing the party if the broker:

(1) has not agreed with the party, either orally or in writing, to represent the party;

(2) is not otherwise acting as the party's agent at the time of showing the real property;

(3) does not provide to the party opinions or advice regarding the real property or real estate transactions in general; and

(4) does not perform any other act of real estate brokerage for the party.

(b) Requires a broker, before the broker is authorized to show real property under Subsection (a), as applicable, to disclose to the party as required by Section 1101.558(b) (relating to certain disclosure requirements of a license holder who represents a party in a proposed real estate transaction) if the broker represents the owner of the real property or provide to the party the written notice described by Section 1101.558(b-1) (relating to requiring a license holder to provide to a certain party a certain written notice) if the broker does not represent the owner of the real property.

(c) Authorizes a broker showing real property under this section, notwithstanding Subsections (a)(3) and (4), to confirm information to a party regarding the size, price, and terms of the real property available for sale or lease.

Sec. 1101.563. WRITTEN AGREEMENT REQUIRED. (a) Defines "residential real property."

(b) Requires a license holder who performs any act of real estate brokerage for a prospective buyer of residential real property to enter into a written agreement with the prospective buyer before showing any residential real property to the prospective buyer or, if no residential real property will be shown, presenting an offer to purchase residential real property on behalf of the prospective buyer.

(c) Requires that the written agreement required by Subsection (b) state certain information and disclose in conspicuous language that broker compensation is not set by law and is fully negotiable.

(d) Requires a license holder who enters into a written agreement with a prospective buyer for the sole purpose of showing real property under Section 1101.562 to enter into a separate agreement with the prospective buyer if additional real estate brokerage acts are to be provided after showing the real property.

(e) Prohibits a written agreement with a prospective buyer for showing real property under Section 1101.562 from being an exclusive agreement with the license holder or stating a termination date more than fourteen days from the date the agreement is entered into.

SECTION 11. Amends Sections 1101.652(a) and (b), Occupations Code, as follows:

(a) Authorizes TREC to suspend or revoke a license issued under this chapter or Chapter 1102 or take other disciplinary action authorized by this chapter or Chapter 1102 if the license holder takes certain actions, including failing to honor, within a reasonable time, a payment, rather than a check, issued to TREC after TREC has sent by certified mail a request for payment to the license holder's last known address, rather than business address, according to TREC records.

(b) Authorizes TREC to suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage, takes certain actions, including failing to enter into a written agreement with a prospective buyer as required by Section 1101.563. Makes nonsubstantive changes.

SECTION 12. Amends Section 1101.653, Occupations Code, to make a conforming change.

SECTION 13. Repealers: Sections 1101.002(8) (relating to defining "subagent") and 1101.805(f) (relating to providing that a party or license holder is not liable for a misrepresentation or a concealment of a material fact made by a subagent in a real estate transaction unless certain actions are taken), Occupations Code.

SECTION 14. Makes application of Section 1101.204, Occupations Code, as amended by this Act, prospective.

SECTION 15. Makes application of Section 1101.356(a), Occupations Code, as amended by this Act, prospective.

SECTION 16. Makes application of Section 1101.358(a), Occupations Code, as amended by this Act, prospective.

SECTION 17. Makes application of Section 1101.458, Occupations Code, as amended by this Act, prospective.

SECTION 18. Makes application of Section 1101.652(b), Occupations Code, as amended by this Act, prospective.

SECTION 19. Effective date: January 1, 2026.