

BILL ANALYSIS

C.S.H.B. 3261
By: Geren
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that state law governing appraisal management companies needs to be updated to reflect recent changes to state law governing real estate appraisers and changes to federal law. C.S.H.B. 3261 seeks to address this need by revising the Texas Appraisal Management Company Registration and Regulation Act, including routine corrections of terminology and repeal of outdated provisions.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3261 amends the Occupations Code to specify that the inapplicability of the Texas Appraisal Management Company Registration and Regulation Act to an appraisal management company with an appraisal panel of not more than 15 appraisers at all times during a calendar year applies to an appraisal management company operating only in Texas and to make the act inapplicable to a federally regulated appraisal management company and to an appraisal management company operating in multiple states, including Texas, with an appraisal panel of not more than 24 appraisers in all states at all times during a calendar year.

C.S.H.B. 3261 requires the Texas Appraiser Licensing and Certification Board to collect from each federally regulated appraisal management company operating in Texas the national registry fee and information regarding the determination of the fee as required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor, a fee in an amount that is sufficient for the administration of this bill provision as established by board rule, and any other information required by state or federal law. The bill requires the board to deposit such fees collected under this provision to the credit of the appraiser registry account in the general revenue fund and requires such fees to be sent to the appraisal subcommittee as required by federal law.

C.S.H.B. 3261 removes the specification, for purposes of the ownership interest that triggers the prohibition against a person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state owning in any manner an appraisal management company registered or applying for registration under the Texas Appraisal Management Company Registration and Regulation Act, that such ownership interest is more than one percent of such a company. The bill adds as a condition for exemption from that

prohibition that the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board and repeals certain statutory provisions relating to prohibited ownership interests in an appraisal management company registered or applying for registration under that act. The bill requires the board to adopt rules regarding registration under the Texas Appraisal Management Company Registration and Regulation Act. The bill adds as a condition for exemption from the prohibition against a person designated as the controlling person for an appraisal management company having had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state that the person's license or certificate was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board.

C.S.H.B. 3261 authorizes the board to deny an application or a registration renewal under the Texas Appraisal Management Company Registration and Regulation Act under certain conditions, requires the board to immediately provide written notice to the applicant of the board's denial, and specifies that an appeal of the denial is governed by the Administrative Procedure Act. The bill removes the specification that the ownership interest of any person in an appraisal management company or any controlling person of the company applying for a registration or renewal of a registration that triggers the board's authority to deny the application is an ownership interest in more than 10 percent of the company or controlling person within the 24 months preceding the date of the application.

C.S.H.B. 3261 adds as a condition for establishing that an appraisal management company is not in violation of statutory provisions relating to the employment of certain prohibited persons that the license or certification of the person or entity with whom the company enters into a business relationship was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board. The bill replaces the requirement that a person who performs an appraisal review for an appraisal management company be licensed or certified under the Texas Appraiser Licensing and Certification Act with at least the same certification for the property type as the appraiser who completed the report being reviewed with a requirement that such a person be licensed as an appraiser under the act, unless exempt by board rule, and qualified to perform the appraisal being reviewed. The bill changes the applicability of statutory provisions relating to appraisal management company business records from applicability to an appraisal management company registered under the Texas Appraisal Management Company Registration and Regulation Act to applicability to an appraisal management company required to register under the act and authorizes the board to audit such a company's records to ensure compliance with federal law.

C.S.H.B. 3261 removes the provision establishing the period during which an appraisal management company is not subject to the prohibition against removing an appraiser from its panel or otherwise refusing to assign requests for appraisal services to an appraiser. The bill authorizes the board to report to the appraisal subcommittee any disciplinary action taken by the board against an appraisal management company required to register under the Texas Appraisal Management Company Registration and Regulation Act. The bill requires an administrative penalty imposed against a person who violates that act or a rule adopted under that act to be deposited in a restricted fund maintained and operated by the board to develop educational programs for appraisers or to conduct studies that enhance consumer protection. The bill establishes that, for purposes of statutory provisions relating to certain prohibited practices of an appraisal management company or an employee, director, officer, or agent of an appraisal management company, a fee paid by an appraisal management company to an appraiser for appraisal services is not a financial benefit.

C.S.H.B. 3261 authorizes the board, on its own motion, to file a complaint against a controlling person of an appraisal management company or a person who engages in an activity for which registration is required under the Texas Appraisal Management Company Registration and Regulation Act without being registered. The bill prohibits an investigation of an alleged violation by a person registered under that act from being terminated solely on the basis that the person fails to renew the registration. The bill authorizes the board, based on the report submitted

regarding an investigation of a complaint, to permit the person who is the subject of a complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation.

C.S.H.B. 3261 authorizes the board to negotiate a settlement and enter into an agreed order with an appraisal management company or other person who is the subject of a complaint under provisions of the Texas Appraisal Management Company Registration and Regulation Act. The bill requires an agreed order to be approved by the board and signed by the board commissioner and the appraisal management company or other person who is the subject of the complaint. The bill disqualifies a board member who participates in negotiating an agreed order from participating in the adjudication of a contested case that results from the negotiation. The bill establishes that an appraisal management company or other person who consents to negotiate under these provisions waives the right to notice and the opportunity to be heard under the Administrative Procedure Act during the negotiation. The bill authorizes an appraisal management company or other person who enters into an agreed order to be disciplined for failure to comply with the agreed order.

C.S.H.B. 3261 establishes that information or material that is prepared or compiled by the board in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the board is confidential and not subject to disclosure under state public information law or any other means of legal compulsion for release. The bill sets out the persons and entities to whom and the conditions under which such information and material may be disclosed, establishes that the release of such information is not a voluntary disclosure for purposes of state public information law, and authorizes the board to require that a confidentiality agreement be signed by a person entitled to receive such information before releasing the information. The bill authorizes the board to withhold information or material relating to a complaint, investigation, or audit without requesting a decision from the attorney general and establishes that, on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by the board in connection with the complaint, investigation, or audit is subject to disclosure under state public information law and under statutory provisions relating to the state auditor. The bill clarifies the requirement regarding a notice of hearing to specify that such notice must be personally delivered or sent by certified mail to the parties to the hearing instead of to the company.

C.S.H.B. 3261 prohibits the attorney general from representing the board in a contested case before the State Office of Administrative Hearings, authorizes the board in a contested case hearing to grant a witness immunity from disciplinary action by the board, requires the official record of the hearing to include the reason for granting immunity, and sets out provisions relating to the record of contested case proceedings as regards the means of recording, transcription requirements, transcription expenses, and maintenance of recordings, notes, and transcriptions of the proceedings. The bill authorizes the administrative law judge to conduct a hearing or enter an order, as determined appropriate by the judge, if a respondent receives proper notice of a contested case hearing but does not appear in person at the hearing and binds the respondent to the results of the hearing to the same extent as if the respondent had appeared. The bill authorizes the administrative law judge to award reasonable costs associated with the hearing to the board on a request for and proof of costs incurred if the respondent fails to appear at the hearing. The bill clarifies the provision requiring the administrative law judge to issue to the board a proposal for decision that the board take one or more specified actions on conclusion of a contested case hearing to specify that such an action requiring payment of costs expended by the board associated with the contested case includes, instead of legal fees and administrative costs, attorney's fees, the costs charged by the State Office of Administrative Hearings, and any administrative costs associated with the hearing, including witness expenses, travel expenses, and investigation expenses. The bill replaces the authorization for a party, not later than the 20th day after the date a final decision is issued in a contested case, to file an application with the board for a rehearing with an authorization for a party to file a motion for rehearing with the board, removes a provision establishing that the application is denied if the board does not grant the application by a certain deadline, and establishes that a motion for rehearing is governed by

the Administrative Procedure Act. The bill requires the board to adopt rules and fees necessary to implement the bill's provisions.

C.S.H.B. 3261 repeals Sections 1104.102(b) and (d), Occupations Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3261 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 1104.003(b), Occupations Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 1104.004(a), Occupations Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 1104.052, Occupations Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 1104.102(a), Occupations Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Sections 1104.103(b) and (c), Occupations Code, are amended.	SECTION 5. Same as introduced version.
SECTION 6. Section 1104.104(b), Occupations Code, is amended.	SECTION 6. Same as introduced version.
SECTION 7. Section 1104.105, Occupations Code, is amended.	SECTION 7. Same as introduced version.
SECTION 8. Section 1104.151(b), Occupations Code, is amended to read as follows: (b) An appraisal management company is not in violation of Subsection (a) if: (1) the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since that denial, revocation, or surrender had a license or certificate granted or that license or certification reinstated; (2) the license or certification was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board; and (3) the person maintains the license or certificate in good standing.	SECTION 8. Section 1104.151(b), Occupations Code, is amended to read as follows: (b) An appraisal management company is not in violation of Subsection (a) if: (1) the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has subsequently [since that denial, revocation, or surrender] had the [a] license or certificate granted or reinstated; (2) the license or certification was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board; and (3) the person maintains the license or certificate in good standing.

SECTION 9. Section 1104.153, Occupations Code, is amended.

SECTION 9. Same as introduced version.

SECTION 10. Section 1104.156, Occupations Code, is amended.

SECTION 10. Same as introduced version.

SECTION 11. Section 1104.161(a), Occupations Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Section 1104.201, Occupations Code, is amended by adding Subsection (c) to read as follows:

SECTION 12. Section 1104.201, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board may report to the appraisal subcommittee any disciplinary action taken against an appraisal management company required to register under this chapter.

(c) The board may report to the appraisal subcommittee any disciplinary action taken by the board against an appraisal management company required to register under this chapter.

SECTION 13. Section 1104.202, Occupations Code, is amended.

SECTION 13. Same as introduced version.

SECTION 14. Section 1104.203, Occupations Code, is amended.

SECTION 14. Same as introduced version.

SECTION 15. Section 1104.204(b), Occupations Code, is amended to read as follows:

SECTION 15. Section 1104.204(b), Occupations Code, is amended to read as follows:

(b) The board, on its own motion, may file a complaint against:

(b) The board, on its own motion, may file a complaint against:

(1) an appraisal management company registered under this chapter; or

(1) an appraisal management company registered under this chapter;

(2) a person who engages in an activity for which registration is required under this chapter without being registered.

(2) a controlling person; or

(3) a person who engages in an activity for which registration is required under this chapter without being registered.

SECTION 16. Section 1104.205, Occupations Code, is amended.

SECTION 16. Same as introduced version.

SECTION 17. Section 1104.208(a), Occupations Code, is amended.

SECTION 17. Same as introduced version.

SECTION 18. Subchapter E, Chapter 1104, Occupations Code, is amended by adding Sections 1104.2081 and 1104.2082 to read as follows:

SECTION 18. Subchapter E, Chapter 1104, Occupations Code, is amended by adding Sections 1104.2081 and 1104.2082 to read as follows:

Sec. 1104.2081. AGREED ORDER. (a) The board may negotiate a settlement and enter into an agreed order with an appraisal management company or other person who is the subject of a complaint under this subchapter.

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(b) An agreed order must be:

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(1) approved by the board; and

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(2) signed by the commissioner and the

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appraisal management company or other person who is the subject of the complaint.

(c) A board member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) An appraisal management company or other person who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(e) An appraisal management company or other person who enters into an agreed order under this section may be disciplined for failure to comply with a consent order.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL.

SECTION 19. The heading to Section 1104.210, Occupations Code, is amended.

SECTION 20. Section 1104.212, Occupations Code, is amended.

SECTION 21. Subchapter E, Chapter 1104, Occupations Code, is amended.

SECTION 22. Section 1104.214, Occupations Code, is amended.

SECTION 23. Section 1104.215, Occupations Code, is amended.

SECTION 24. Section 1104.216, Occupations Code, is amended.

SECTION 25. Sections 1104.102(b) and (d), Occupations Code, are repealed.

SECTION 26. As soon as practicable after the effective date of this Act, the Texas Appraiser Licensing and Certification Board shall adopt rules and fees necessary to implement Chapter 1104, Occupations Code, as amended by this Act.

SECTION 27. The changes in law made by this Act relating to the eligibility for a registration under Chapter 1104, Occupations Code, or to the requirements for an application under that chapter apply only to an application submitted to the

appraisal management company or other person who is the subject of the complaint.

(c) A board member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) An appraisal management company or other person who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(e) An appraisal management company or other person who enters into an agreed order under this section may be disciplined for failure to comply with the agreed order.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

Texas Appraiser Licensing and Certification Board on or after the effective date of this Act. An application submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 28. The changes in law made by this Act relating to the requirements for renewal of a registration under Chapter 1104, Occupations Code, apply only to an application for renewal of a registration that expires on or after the effective date of this Act. A registration that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 29. The changes in law made by this Act apply only to a disciplinary proceeding or a contested case hearing under Chapter 1104, Occupations Code, for conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 30. This Act takes effect September 1, 2017.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Same as introduced version.