

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 577  
By: Haywood  
State Affairs  
4-17-97  
Committee Report (Substituted)

### **DIGEST**

Currently, Texas governmental and business entities purchase easements and rights-of-way from private landowners to facilitate the delivery of services and products. Historically, real estate brokers have not played a role in such transactions. There are concerns that these transactions should fall outside of the purview of the Real Estate Licensing Act in order to preserve the unique nature of such transactions. This bill exempts these transactions from the application of the Texas Real Estate License Act.

### **PURPOSE**

As proposed, C.S.S.B. 577 provides an exemption from regulation for certain transactions under the Real Estate License Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Real Estate Commission in SECTION 8 (Sec. 9A, Article 6573a, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2(5), Article 6573a, V.T.C.S. (The Real Estate License Act), to redefine "person."

SECTION 2. Amends Section 3, Article 6573a, V.T.C.S., to include a partnership or limited partnership performing an act constituting an act of a broker or salesman, as defined by this Act, through a partner who is duly licensed as a real estate broker; or a person registered under Section 9A of this Act who performs certain functions in connection with telecommunication, utility, railroad, or pipeline service, among a list of exemptions from the provisions of this Act.

SECTION 3. Amends Section 4, Article 6573a, V.T.C.S., to require certain acts by a person required to be licensed or registered under this Act and not so licensed or registered to constitute a violation of this Act.

SECTION 4. Amends Section 5(m), Article 6573a, V.T.C.S., to require the Texas Real Estate Commission (commission) to charge and collect as a condition for insurance and for renewal of a registration under Section 9A of this Act the fee under Section 11(a)(14) of this Act.

SECTION 5. Amends Section 6, Article 6573a, V.T.C.S., to require an individual to fulfill certain conditions in order to be eligible for a registration or renewal of a registration under Section 9A of this Act. Requires certain entities, in order to be eligible for a registration or renewal of a registration under Section 9A of this Act, to designate one of its officers, partners, or managers to act for it. Requires the designated person to be an individual registered under Section 9A of this Act.

SECTION 6. Amends Section 8, Article 6573a, V.T.C.S., to provide that the use of a real estate recovery fund (fund) is limited to an act that constitutes a violation of Section 15(a)(3) or (6) of this Act, if the judgment debtor was at the time of the violation employed in a certain occupation. Provides that the use of the fund is limited to an act that constitutes a violation of Section 9A(c)(1) of this Act if the judgment debtor was at the time of the violation registered under Section 9A of this

Act. Requires the registrant to pay, in addition to other fees, a fee of \$50, which shall be deposited in the real estate recovery fund in certain situations. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 9, Article 6573a, V.T.C.S., to require a license or certificate of registration to be issued when an applicant has satisfactorily met all requirements and conditions of this Act, and remains in force and effect for a certain amount of time. Prohibits a person from engaging in the business of selling, buying, leasing, or transferring an easement or right-of-way for another for compensation until the person is licensed or registered under this Act. Makes conforming changes.

SECTION 8. Amends Article 6573a, V.T.C.S., by adding Section 9A, as follows:

Sec. 9A. REGISTRATION OF UNLICENSED PERSONS WHO SELL, BUY, LEASE, OR TRANSFER AN EASEMENT OR RIGHT-OF-WAY. Prohibits a person from selling, buying, leasing, or transferring an easement or right-of-way for another for compensation for use in connection with telecommunication, utility, railroad, or pipeline services unless the person fulfills certain criteria. Requires the commission to maintain a registry of persons who are required to register under this section. Requires the commission to investigate a signed complaint received by the commission that related to the acts of a person registered under this section. Authorizes the commission to refuse to issue or renew and to revoke or suspend the registration of certain registrants under this section. Authorizes the commission to adopt rules to administer and enforce this section.

SECTION 9. Amends Section 10(a), Article 6573a, V.T.C.S., to make a conforming change.

SECTION 10. Amends Section 11, Article 6573a, V.T.C.S., to require the commission to charge and collect an annual fee of \$80 from each registrant under Section 9A of this Act and any fee authorized under Section 8 of this Act for the real estate recovery fund. Makes conforming changes.

SECTION 11. Amends Section 12, Article 6573a, V.T.C.S., by adding Subsection (e), to require the certificate of registration of a registrant to be prominently displayed in the registrant's place of business. Requires the registrant to notify the commission of a move and obtain a new certificate of registration reflecting the new location within a certain time period after a move from a previously designated address.

SECTION 12. Amends Sections 16(a) and (b), Article 6573a, V.T.C.S., to make conforming changes.

SECTION 13. Amends Section 19(a), Article 6573a, V.T.C.S., to provide that a person acting as an agency in a transaction involving the sale, purchase, lease, or transfer of a right-of-way or easement without first obtaining a certificate of registration under Section 9A of this Act is guilty of certain violations.

SECTION 14. Effective date: January 1, 1998.

SECTION 15. Makes application of this Act prospective.

SECTION 16. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Redesignates existing SECTION 1 as new SECTION 2 and adds new SECTIONS 1 and 3-15.

SECTION 1.

Amends Section 2(5), Article 6573a, V.T.C.S., to redefine "person" to include any other entity, governmental body, limited liability partnership, and partnership.

SECTION 2.

Amends Section 3, Article 6573a, V.T.C.S., to include certain partnerships and persons in a list of exemptions from this Act.

#### SECTION 3.

Amends Section 4, Article 6573a, V.T.C.S., to require the commission of certain acts by a person required to be licensed or registered under this Act and not so licensed or registered to constitute a violation of this Act.

#### SECTION 4.

Amends Section 5(m), Article 6573a, V.T.C.S., to require the commission to charge and collect a certain fee.

#### SECTION 5.

Amends Section 6, Article 6573a, V.T.C.S., to add Subsection (d) which provides certain eligibility factors for persons and other entities to meet to qualify for a registration or renewal of a registration.

#### SECTION 6.

Amends Section 8, Article 6573a, V.T.C.S., to require a real estate recovery fund (fund) to be used to reimburse persons who suffer damage by reason of certain acts committed by a duly registered person under Section 9A of this Act. Provides that the fund is limited to an act that constitutes a violation of Section 15(a)(3) or (6) of this Act and provides conditions to this effect. Requires a registrant to pay a fee of \$50 which shall be deposited in the fund on application for an original registration under Section 9A and in addition to other fees. Makes conforming and nonsubstantive changes.

#### SECTION 7.

Amends Section 9, Article 6573a, V.T.C.S., to prohibit a person from engaging in certain business activities for any compensation until the person is licensed or registered under this Act. Makes conforming changes.

#### SECTION 8.

Amends Article 6573a, V.T.C.S., by adding a new Section 9A, relating to registration of unlicensed persons who sell, buy, lease, or transfer an easement or right-of-way.

#### SECTION 9.

Amends Section 10(a), Article 6573a, V.T.C.S., to make a conforming change.

#### SECTION 10.

Amends Section 11, Article 6573a, V.T.C.S., to add Subdivisions (16) and (17) to the list of required fees to be charged and collected by the agency. Makes conforming changes.

#### SECTION 11.

Amends Section 12, Article 6573a, V.T.C.S., to require a certificate of registration of a registrant to be displayed in a certain manner and to be updated upon relocation of the registrant.

#### SECTION 12.

Amends Sections 16(a) and (b), Article 6573, V.T.C.S., to make conforming changes.

SECTION 13.

Amends Section 19(a), Article 6573a, V.T.C.S., to provide that a person who acts in a certain manner without obtaining a certificate of registration is guilty of a misdemeanor and sets forth the punishment for such violation.

Adds SECTION 14 to set forth the effective date.

Adds SECTION 15 to make application of this Act prospective.

Adds SECTION 16 to set forth the emergency clause.