

BILL ANALYSIS

Senate Research Center
82R8163 JAM-F

S.B. 1171
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Business & Commerce
3/28/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Appraiser Licensing and Certification Act (Chapter 1103 (Real Estate Appraisers), Occupations Code), has not been updated for many sessions. Since the Act's creation, several issues pertaining to the administration of the Act, hearings, and licenses have arisen.

S.B. 1171 aims to address these issues. The bill would require licensees to maintain current phone and primary e-mail address, if available, with the agency. It would also amend the law to allow for electronic delivery of licenses because all references in statute are to paper. It would also give the authority for the Texas Appraisers Licensing and Certification Boards (TALCB) to delegate authority to the commissioner to sign "agreed orders," which are case resolutions where the parties agree on the appropriate outcome.

S.B. 1171 amends the statute pertaining to hearings with the State Office of Administrative Hearings (SOAH). The process currently requires TALCB to proceed to a hearing at SOAH even when a respondent ignores the disciplinary actions filed based on a verified complaint. This forces undue work and delays in resolving cases within the one-year mandated federal limit. The bill would fix this problem by granting authority to enter a default order if the holder of a license or certification does not respond to charges and requests a hearing. S.B. 1171 would also repeal the authority for an administrative law judge to impose confidentiality terms via a proposal for decision on certain final orders. Such a provision does not appear in other license law context.

Furthermore, S.B. 1171 amends the statute pertaining to licenses, by allowing for temporary license revocation by TALCB if the person is believed to present immediate risks, provided that the matter is set for an expedited hearing at SOAH; extending the period for licensure reapplication from one year to two years in cases where an appraiser's license has been revoked; adjusting the renewal times for provisional licenses; and clarifying that an applicant who fails the appraiser licensing examination three consecutive times will be required to take additional education before taking the examination again.

As proposed, S.B. 1171 amends current law relating to practices and professions regulated by the Texas Appraiser Licensing and Certification Board.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Appraiser Licensing and Certification Board (TALCB) is modified in SECTION 5 (Section 1103.151, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TALCB in SECTION 12 (Section 1103.2091, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1103.002, Occupations Code, as follows:

Sec. 1103.002. PURPOSE. Provides that the purpose of this chapter is to:

(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(2) enforce standards for the appraisal of real property.

SECTION 2. Amends Section 1103.003(1), Occupations Code, to redefine "appraisal."

SECTION 3. Amends Section 1103.004(b), Occupations Code, as follows:

(b) Provides that this chapter does not prohibit:

(1) a person authorized by law from performing an evaluation of real property for or providing an evaluation of real property to another person; or

(2) a real estate broker licensed under Chapter 1101 (Real Estate Brokers and Salespersons) or a salesperson acting under the authority of a sponsoring broker from providing to another person a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion is not referred to as an appraisal, is not given in the ordinary course of the broker's or salesperson's business, and is related to the actual or potential acquisition, disposition, encumbrance, or management of an interest in real property.

Deletes existing text providing that this chapter does not prohibit a real estate broker or salesperson licensed under Chapter 1101, but not certified or licensed under this chapter, from performing an appraisal in a transaction other than a federally related transaction.

Deletes existing text providing that this chapter does not prohibit the requirement that a person who is not certified or licensed under this chapter be licensed as a real estate broker or salesperson to perform an appraisal in a transaction other than a federally related transaction.

Deletes existing text providing that this chapter does not prohibit a salesman licensed under Chapter 1101 from giving an opinion if the opinion is not referred to as an appraisal; and is given in the ordinary course of the broker's or salesperson's business to a potential seller or third party regarding the recommended listing price of real property; or a potential purchaser or third party regarding the recommended purchase price of real property.

Makes nonsubstantive changes.

SECTION 4. Amends Section 1103.101(b), Occupations Code, to authorize the Texas Appraiser Licensing and Certification Board (TALCB) to delegate to the commissioner of the TALCB (commissioner) the responsibility for administering this chapter, including the approval of consent orders and agreements.

SECTION 5. Amends Section 1103.151, Occupations Code, to authorize TALCB to adopt certain rules, including rules relating to procedures for the timely renewal of a certificate, license, or trainee approval. Makes nonsubstantive changes.

SECTION 6. Amends Section 1103.156(a), Occupations Code, to authorize TALCB to establish reasonable fees to administer this chapter, including a renewal fee for an appraiser trainee, rather than an annual renewal fee for an appraiser trainee.

SECTION 7. Amends Subchapter D, Chapter 1103, Occupations Code, by adding Sections 1103.157 and 1103.158, as follows:

Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. Authorizes TALCB to solicit, accept, and administer gifts, grants, and donations of any kind from any public or private source for the purpose of this chapter.

Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER. Authorizes a TALCB member, notwithstanding Section 572.051 (Standards of Conduct; State Agency Ethics Policy), Government Code, to testify as an expert witness in an action concerning a violation of the Uniform Standards of Professional Appraisal Practice.

SECTION 8. Amends Section 1103.201, Occupations Code, as follows:

Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) Prohibits a person from performing an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered as a temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the sponsorship of a certified appraiser. Deletes existing text prohibiting a person, unless the person is certified under this chapter, from using the title "state-certified real estate appraiser", or referring to an appraisal prepared by the person as a "certified appraisal." Makes nonsubstantive changes.

(b) Prohibits a person, unless the person holds the appropriate license or certification, rather than unless the person is licensed under this chapter, from using the title "state-certified real estate appraiser" or "state licensed real estate appraiser", or from referring to an appraisal performed, rather than prepared, by the person as a "certified appraisal" or "licensed appraisal."

SECTION 9. Amends Subchapter E, Chapter 1103, Occupations Code, by adding Section 1103.2015, as follows:

Section 1103.2015. GENERAL APPLICATION REQUIREMENTS. Requires an applicant for a license or certificate issued under this chapter to provide TALCB with the applicant's current mailing address, telephone number, and e-mail address, if available.

SECTION 10. Amends Section 1103.206(b), Occupations Code, as follows:

(b) Requires TALCB to adopt a reliable method to verify the evidence of appraisal experience submitted by an applicant for a certificate or license. Requires that the method include the review of appraisal experience of all applicants for certification and must rely on appropriate sampling techniques that are applied to not more than five percent of the license applications received by TALCB. Provides that an applicant whose application is selected for verification has at least 60 days after the date of selection to prepare any records requested by TALCB.

SECTION 11. Amends Sections 1103.209(a), (e), (f), and (g), Occupations Code, as follows:

(a) Requires, rather than authorizes, TALCB to issue a reciprocal certificate or license to an applicant from another state if the appraiser licensing and certification program of the other state is in compliance with 12 U.S.C. Section 3331 et seq., the appraiser holds a valid license or certificate from a state whose requirements for licensure or certification meet or exceed the licensure or certification requirements of this state, and the appraiser satisfies TALCB as to the appraiser's honesty, trustworthiness, and integrity. Deletes existing text authorizing TALCB to issue a certificate or license under terms adopted by TALCB to an applicant who is certified or licensed under the laws of another state having certification or licensing requirements that TALCB determines have not been disapproved by the Appraiser Qualifications Board. Deletes existing text requiring that the terms comply with the minimum criteria for obtaining a certificate or license recognized by the Appraiser Qualifications Board.

(e) Requires the commissioner, if process is served as provided by this subsection, to immediately send a copy of the material served on the commissioner to the certified or

licensed appraiser at the appraiser's address of record, rather than send a copy of the material served on the commissioner by regular mail to the certified or licensed appraiser at the appraiser's principal place of business and residence address.

(f) Requires TALCB to request verification from the state in which the applicant is certified or licensed to confirm that the applicant's certificate or license is value, active, and in good standing.

(g) Provides that a reciprocal certificate or license expires on the second anniversary of the last day of the month in which it was issued, rather than providing that a reciprocal certificate or license expires on the earlier of the expiration date of the certificate or license held by the applicant in the state in which the applicant is certified or licensed, or the first anniversary of the date the reciprocal certificate or license is issued.

SECTION 12. Amends Subchapter E, Chapter 1103, Occupations Code, by adding Section 1103.2091, as follows:

Sec. 1103.2091. PROBATIONARY CERTIFICATE, LICENSE, OR TRAINEE APPROVAL. (a) Authorizes TALCB to issue a probationary certificate or license or approve an appraiser trainee on a probationary basis.

(b) Requires TALCB by rule to adopt reasonable terms for issuing a probationary certificate or license and for approval of an appraiser trainee on a probationary basis.

(c) Requires a person who holds a probationary certificate or license or who is approved as an appraiser trainee under this section to disclose the probationary status to all clients before accepting an assignment.

SECTION 13. Amends Subchapter E, Chapter 1103, Occupations Code, by adding Section 1103.2111, as follows:

Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE, LICENSE, OR TRAINEE APPROVAL. (a) Authorizes a person whose certificate, license, or approval has been expired for 90 days or less to renew the certificate, license, or approval by paying to TALCB a fee equal to 1-1/2 times the required renewal fee. Authorizes a person, if a certificate, license, or approval has been expired for more than 90 days but less than six months, to renew the certificate, license, or approval by paying to TALCB a fee equal to two times the required renewal fee.

(b) Requires that a certificate, license, or approval that is renewed under this section expire on the date that would apply had the certificate, license, or approval been timely renewed.

(c) Prohibits a person from performing an appraisal in a federally related transaction while the person is not actively licensed or certified as an appraiser.

(d) Prohibits a person, if a person's certificate, license, or approval has been expired six months or longer, from renewing the certificate, license, or approval. Authorizes a person to obtain a new certificate, license, or approval by complying with the requirements and procedures for an original application.

SECTION 14. Amends Section 1103.258(b), Occupations Code, to prohibit an applicant who fails the examination three consecutive times from applying for reexamination or submitting a new license application unless the applicant submits evidence satisfactory to TALCB that the applicant has completed additional education, as prescribed by TALCB, since the date the applicant took the last examination, rather than requiring an applicant who has not successfully completed the examination before the first anniversary of the date the applicant was initially accepted by TALCB to submit a new application and pay the required application fee.

SECTION 15. Amends Subchapter G, Chapter 1103, Occupations Code, by adding Section 1103.304, as follows:

Sec. 1103.304. EXTENSION OF REGISTRATION. Authorizes a person to obtain a 90-day extension of a temporary registration under this subchapter by completing an extension form approved by TALCB and paying any required fee. Authorizes TALCB to grant only one extension for each temporary registration.

SECTION 16. Amends Subchapter H, Chapter 1103, Occupations Code, by adding Section 1103.356, as follows:

Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE APPROVAL. Authorizes a person to renew an approval as an appraiser trainee by paying the renewal fee established by TALCB, providing evidence satisfactory to TALCB of completion of any required continuing education, and meeting any other requirement established by TALCB.

SECTION 17. Amends the heading to Section 1103.403, Occupations Code, to read as follows:

Sec. 1103.403. CONTACT INFORMATION.

SECTION 18. Amends Section 1103.403(b), Occupations Code, as follows:

(b) Requires an appraiser, not later than the 10th day after the date an appraiser changes the appraiser's address, e-mail address, or telephone number, to notify TALCB of the change, and pay any required fee, rather than requiring an appraiser, not later than the 10th day after the date a certified or licensed appraiser moves from a previously designated address, to notify TALCB of the new office location on a form prescribed by TALCB and pay a fee set by TALCB. Makes nonsubstantive changes.

SECTION 19. Amends Subchapter K, Chapter 1103, Occupations Code, by adding Sections 1103.5011 and 1103.5012, as follows:

Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the commissioner to send an appraiser against whom a complaint has been filed a notice of violation including a summary of the alleged violation; the recommended sanction, including the amount of any administrative penalty sought; and a conspicuous notice that the respondent has the right to a hearing to contest the alleged violation, the recommended sanction, or both.

(b) Authorizes the person, not later than the 20th day after the date the person receives the notice under Subsection (a), to accept the commissioner's determination including the recommended sanction, or request in writing a hearing, to be held under Chapter 2001 (Administrative Procedure), Government Code, on the occurrence of the violation, the sanction, or both.

Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. Requires TALCB by order, if the person accepts the commissioner's determination, or fails to respond in a timely manner to the notice, to approve the determination and order payment of the recommended penalty, impose the recommendation sanction, or both.

SECTION 20. Amends Section 1103.518, Occupations Code, to delete existing text requiring the administrative law judge, on conclusion of a contested case hearing an on submission of all written responses allowed under Section 1103.515 (Response to Certain Accusations), to make certain determinations, including issuing an order declaring that the case file is confidential.

SECTION 21. Amends Section 1103.522, Occupations Code, as follows:

Sec. 1103.522. REINSTATEMENT OF CERTIFICATE OR LICENSE. Prohibits a person whose certificate or license has been revoked or a person who has surrendered a

certificate or license issued by TALCB from applying to TALCB for reinstatement until the second anniversary of the date of revocation or surrender, rather than authorizes a person whose certificate or license has been suspended or revoked by TALCB to apply to TALCB for reinstatement as provided by the order of suspension or revocation. Deletes designation of existing Subsection (a). Deletes existing Subsection (b) prohibiting an appraiser, if the order does not establish terms for reinstatement, from making an initial application for reinstatement until the first anniversary of the effective date of the order, or making subsequent applications more often than once every two years. Makes a nonsubstantive change.

SECTION 22. Amends Subchapter L, Chapter 1103, Occupations Code, by adding Section 1103.5511, as follows:

Sec. 1103.5511. TEMPORARY SUSPENSION. (a) Requires the presiding officer of TALCB to appoint a disciplinary panel consisting of three TALCB members to determine whether a person's license or certification to practice under this chapter should be temporarily suspended.

(b) Requires the panel, if the disciplinary panel determines from the information presented to the panel that a person licensed or certified to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, to temporarily suspend the license or certification of that person.

(c) Authorizes a license or certification to be suspended under this section without notice or hearing on the complaint if institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension, and a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Provides that a temporarily suspension under this section automatically expires after 45 days if TALCB has not scheduled a hearing to take place within that time or if, at TALCB's request, the hearing is continued beyond the 45th day.

(e) Authorizes the disciplinary panel, notwithstanding Chapter 551 (Open Meetings), Government Code, to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

SECTION 23. Amends Section 1103.552, Occupations Code, as follows:

Sec. 1103.552. ADMINISTRATIVE PENALTY. (a) Authorizes TALCB to impose an administrative penalty for a violation of this chapter or a rule adopted or order issued by TALCB under this chapter, rather than under Section 1103.518(2)(H) (relating to imposing an administrative penalty as prescribed by Section 1103.552), in an amount not to exceed \$1,500 for each violation, or \$5,000 for multiple violations in a single case, rather than \$5,000 for multiple violations proved in one contested case.

(b) Requires the person on whom the penalty is imposed to pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final, rather than the date of the final disposition of the contested case.

SECTION 24. Repealers: Sections 1103.208 (Provision License for Certain Appraiser) and 1103.209(b) (relating to prohibiting TALCB from accepting an application from an applicant from another state that refuses to offer reciprocal treatment), Occupations Code.

SECTION 25. Makes application of Section 1103.209(b), Occupations Code, prospective.

SECTION 26. Makes application of Section 1103.2111, Occupations Code, as added by this Act, prospective.

SECTION 27. Makes application of Sections 1103.5011 and 1103.5012, Occupations Code, as added by this Act, prospective.

SECTION 28. Effective date: upon passage or September 1, 2011.