

BILL ANALYSIS

Senate Research Center
82R4719 MAW-F

S.B. 747
By: Carona
Business & Commerce
2/28/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The portion of the Texas Occupations Code that regulates the licensing of real estate agents and brokers is in need of clean-up to address and clarify issues pertaining to licensing, broker responsibility, license application and renewal, right-of-way agents, and education providers. Chapter 1101 of the Occupations Code pertains to the licensing of real estate agents and brokers.

The proposed legislation closes a licensing loophole that has arisen from unlicensed entities that are taking advantage of homeowners who choose not to sell a residence but rather rent it while waiting for better market conditions. It also clarifies that the current exception for licensed attorneys involved in brokerage activity in Texas applies only to attorneys licensed in Texas. The proposed legislation clarifies that partnerships are among the businesses that must have corporate broker's license. It also changes the amount of sales experience requirement to obtain a broker's license from two years to six. The bill allows for the Texas Real Estate Commission to establish criteria to determine active experience for purposes of this application. In addition, the proposed legislation requires all brokers who sponsor salespersons to take six classroom hours of broker responsibility education. Changes are made to the course requirement to put a greater emphasis on core classes, specifically those in contracts and real estate finance, because of the importance of these subjects in real estate transactions. The proposed legislation also clarifies that right-of-way agents must undergo background checks. It also changes the first-time pass rate target for pre-license education programs from 55 percent to "average." Fifty-five percent was average at the time the legislation was implemented, but that number varies with time.

As proposed, S.B. 747 amends current law relating to the professions regulated by the Texas Real Estate Commission.

RULEMAKING AUTHORITY

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

Rulemaking authority is expressly granted to TREC in SECTION 8 (Section 1101.356, Occupations Code) and SECTION 15 (Section 1101.458, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1101.002, Occupations Code, by amending Subdivision (1) and adding Subdivision (1-a), to redefine "broker" and define "business entity."

SECTION 2. Amends Section 1101.005, Occupations Code, as follows:

Sec. 1101.005. APPLICABILITY OF CHAPTER. Provides that this chapter does not apply to, among other persons and officials, an attorney licensed in this state, rather than an attorney licensed in any state. Deletes existing text providing that this chapter does not apply to a partnership or limited liability partnership acting as a broker or salesperson through a partner who is a licensed broker as being among those to whom this chapter does not apply.

SECTION 3. Amends Subchapter D, Chapter 1101, Occupations Code, by adding Section 1101.161, as follows:

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. Authorizes 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 this chapter or Chapter 1102 (Real Estate Inspectors) or 1103 (Real Estate Appraisers).

SECTION 4. Amends Section 1101.301, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires TREC, in establishing accreditation standards for an educational program under Subsection (a), to adopt rules setting an examination passage rate benchmark for each category of license issued by TREC under this chapter or Chapter 1102. Requires that the benchmark be based on the average percentage of examinees that pass the licensing exam on the first attempt. Requires that the program meet or exceed the benchmark for each license category before TREC may renew the program's accreditation. Deletes existing text requiring that TREC adopt rules that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates before TREC may renew the program's accreditation.

(d) Authorizes TREC to deny an application for accreditation if the applicant at any time owns or controls an educational program or course of study for which accreditation was revoked.

SECTION 5. Amends Section 1101.351, Occupations Code, by adding Subsection (a-1), to prohibit a person employed by, sponsored by, or associated with a business entity, unless the business entity holds a license issued under this chapter, from acting as or representing that the person is a broker or salesperson, or acting as a residential rental locator.

SECTION 6. Amends Section 1101.352, Occupations Code, by adding Subsection (d), as follows:

(d) Requires each applicant, at the time an application is submitted under Subsection (a), to provide TREC with the applicant's current mailing address, telephone number, and e-mail address. Requires the applicant to notify TREC of any change in the applicant's mailing or e-mail address or telephone number during the time the application is pending.

SECTION 7. Amends Section 1101.355, Occupations Code, as follows:

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES. (a) Requires a business entity, to be eligible for a license under this chapter, to:

(1) designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity.

Deletes existing text relating to requiring a corporation to designate one of its officers as its agent for purposes of this chapter and requiring a limited liability company to designate one of its managers as its agent for purposes of this chapter.

(b) Prohibits a business entity from acting as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to TREC's records, rather than prohibiting a corporation or limited liability

company from acting as a broker unless the entity's designated agent is a licensed broker according to TREC's records.

(c) Requires a business entity that receives compensation on behalf of a license holder to be licensed as a broker under this chapter.

SECTION 8. Amends Section 1101.356, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires an applicant for a broker license to provide to TREC satisfactory evidence that the applicant, among other requirements, has had at least six years, rather than two years, of active experience in this state as a license holder during the 84 months, rather than 36 months, preceding the date the application is filed. Makes no further changes to this subsection.

(d) Requires TREC by rule to establish what constitutes active experience for purposes of this section and Section 1101.357.

SECTION 9. Amends Section 1101.357, Occupations Code, as follows:

Sec. 1101.357. **BROKER LICENSE: ALTERNATE EXPERIENCE REQUIREMENTS FOR CERTAIN APPLICANTS.** Requires an applicant for a broker license who does not satisfy the experience requirements of Section 1101.356 to provide to TREC satisfactory evidence that the applicant is a licensed real estate broker in another state, has had at least six years, rather than two years, of active experience in that state as a licensed real estate broker or salesperson during the 84 months, rather than 36 months, preceding the date the application is filed, and has satisfied the education requirements prescribed by Section 1101.356, or the applicant was licensed in this state as a broker in the year preceding the date the application is filed.

SECTION 10. Amends Section 1101.358, Occupations Code, as follows:

Sec. 1101.358. **SALESPERSON LICENSE: EDUCATION REQUIREMENTS.** (a) Requires an applicant for a salesperson license to provide to TREC satisfactory evidence that the applicant has completed at least 12 semester hours, rather than 14 semester hours, or equivalent classroom hours, of postsecondary education consisting of:

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

(2) at least two semester hours of each of the following core real estate courses: agency law, contract law, contract forms and addendums, and real estate finance, rather than agency law, contract law and one additional core real estate course. Deletes existing Subdivision (3) requiring that the applicant have completed at least four semester hours of core real estate courses or related courses.

(b) Requires TREC to waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or salesperson within the six months, rather than year, preceding the date the application is filed.

(c) Requires TREC, if an applicant for a salesperson license was licensed as a salesperson within the six months, rather than year, preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, to require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months, rather than year.

SECTION 11. Amends Section 1101.401(f), Occupations Code, to require an applicant to satisfy the examination requirement not later than one year, rather than six months, after the date the license application is filed.

SECTION 12. Amends Sections 1101.451(e) and (f), Occupations Code, as follows:

(e) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to TREC a fee equal to 1-1/2 times the required renewal fee. Authorizes the person to renew the license by paying to TREC a fee equal to two times the required renewal fee, if a license has been expired for more than 90 days but less than six months, rather than one year.

(f) Prohibits a person from renewing the license if a person's license has been expired for six months or longer, rather than one year or longer.

SECTION 13. Amends Section 1101.453, Occupations Code, as follows:

Sec. 1101.453. New heading: **ADDITIONAL RENEWAL REQUIREMENTS FOR BUSINESS ENTITIES.** (a) Requires a business entity, to renew a license under this chapter, to designate one of its managing officers as its agent for purposes of this chapter, and provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity. Deletes existing text requiring a corporation to renew a license under this chapter, to designate one of its officers as its agent for purposes of this chapter and requiring a limited liability company to designate one of its managers as its agent for purposes of this chapter.

(b) Prohibits a business entity, rather than corporation or limited liability corporation, from acting as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to TREC's records.

SECTION 14. Amends Section 1101.454(a), Occupations Code, to require an applicant applying for the first renewal of a salesperson license to provide to TREC satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of core real estate courses, rather than 18 semester hours, or equivalent classroom hours, of postsecondary education, including 14 hours of core real estate courses.

SECTION 15. Amends Subchapter J, Chapter 1101, Occupations Code, by adding Section 1101.458, as follows:

Sec. 1101.458. **ADDITIONAL EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS.** (a) Requires a broker who sponsors a salesperson, 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) Requires TREC by rule to prescribe the title, content, and duration of broker responsibility required under this section.

(c) Authorizes broker responsibility education course hours to be used to satisfy the hours described by Section 1101.455(f) (relating to authorizing the remaining nine hours to be devoted to other real estate-related topics approved by TREC).

(d) Provides that this section does not apply to a broker who is exempt from continuing education requirements under Section 1101.456 (Exemption from Continuing Education Requirements for Certain Brokers).

SECTION 16. Amends Section 1101.502(b), Occupations Code, as follows:

(b) Requires a business entity, to be eligible to receive a certificate of registration or a renewal certificate under this subchapter, to designate as its agent one of its managing officers who is registered under this subchapter. Deletes existing text requiring a corporation, limited liability company, partnership, limited liability partnership, or other entity, to be eligible to receive a certificate of registration or a renewal certificate under this subchapter, to designate as its agent one of its officers, partners, or managers who is registered under this subchapter.

SECTION 17. Amends Subchapter K, Chapter 1101, Occupations Code, by adding Section 1101.5041, as follows:

Sec. 1101.5041. **CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE.** Requires an applicant for an original certificate of registration or renewal of a certificate of registration to comply with the criminal history record check requirements of Section 1101.3521.

SECTION 18. Amends Section 1101.552, Occupations Code, by adding Subsection (e), as follows:

(e) Requires a license holder to provide TREC with the license holder's current mailing address, telephone number, and e-mail address. Requires a license holder to notify TREC of a change in the license holder's mailing or e-mail address or telephone number.

SECTION 19. Amends Section 1101.554, Occupations Code, as follows:

Sec. 1101.554. New heading: **COPY OF SALESPERSON LICENSE.** Deletes existing Subsection (a) designation. Requires TREC to deliver or mail a copy of each salesperson license to the broker with whom the salesperson is associated. Deletes existing Subsection (b) requiring the broker to keep the license under the broker's custody and control.

SECTION 20. Amends Subchapter N, Chapter 1101, Occupations Code, by adding Section 1101.6561, as follows:

Sec. 1101.6561. **SUSPENSION OF REVOCATION OF EDUCATIONAL PROGRAM ACCREDITATION.** Authorizes TREC to suspend or revoke an accreditation issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

SECTION 21. (a) Requires TREC, not later than December 1, 2011, to adopt rules necessary to implement Section 1101.301, Occupations Code, as amended by this Act, and Sections 1101.356(d) and 1101.458, Occupations Code, as added by this Act.

(b) Provides that Section 1101.552(e), Occupations Code, as added by this Act, applies only to a broker or salesperson license issued or renewed on or after December 1, 2011. Provides that a license issued or renewed before December 1, 2011, 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.

(c) Provides that Section 1101.502(b), Occupations Code, as amended by this Act, and Section 1101.5041, Occupations Code, as added by this Act, apply only to an application for a certificate of registration or renewal of a certificate of registration filed with TREC on or after December 1, 2011. Provides that an application filed before that date is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) Provides that Section 1101.458, Occupations Code, as added by this Act, applies only to a license issued or renewed on or after September 1, 2012. Provides that a license issued or renewed before September 1, 2012, 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.

(e) Provides that Sections 1101.352, 1101.355, 1101.356, 1101.357, and 1101.401, Occupations Code, as amended by this Act, apply only to an application for a real estate broker or salesperson license submitted to TREC on or after the effective date of this Act. Provides that an application for a license 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.

(f) Provides that Section 1101.358, Occupations Code, as amended by this Act, applies only to an application for a real estate salesperson license submitted to TREC on or after September 1, 2012. Provides that an application for a license 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.

(g) Provides that Sections 1101.451, 1101.453, and 1101.454, Occupations Code, as amended by this Act, apply only to the renewal of a real estate broker or salesperson license that expires on or after the effective date of this Act. Provides that a license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(h) Provides that a person who holds a license as a real estate broker issued before the effective date of this Act may continue to renew that license without complying with the changes in law made by this Act to Sections 1101.356 and 1101.357, Occupations Code.

(i) Provides that Sections 1101.002 and 1101.005, Occupations Code, as amended by this Act, apply, with respect to conduct that constitutes acting as a broker or salesperson under Chapter 1101, Occupations Code, only to conduct engaged in on or after the effective date of this Act. Provides that conduct engaged in before the effective date of this Act is governed by the law in effect when the conduct was engaged in, and the former law is continued in effect for that purpose.

SECTION 22. Effective date: September 1, 2011.